

Volume 4

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	NO. CR 14-102-CRB
)	
IAN FURMINGER and EDMOND ROBLES,)	
)	San Francisco, California
Defendants.)	Thursday
)	November 13, 2014
)	9:05 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Official Reporters, U.S. District Court

(Appearances continued, next page)

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Also Present:

Defendant Ian Furminger
Defendant Edmond Robles
Special Agent Melissa Patrick
Special Agent Sandra Flores
Dalida Vartanian
Stephen Janick
Alycee Lane
Erik Guzman, Esq.
Ines Swaney, Spanish-Language
Interpreter

1 **NOVEMBER 13, 2014**

9:05 A.M.

2 **P R O C E E D I N G S**

3 **THE COURT:** Okay. Let the record show all parties
4 are present.

5 Bring in the jury, and we'll start.

6 (Jury enters at 9:06 a.m.)

7 **THE COURT:** Let the record reflect all jurors are
8 present.

9 Thank you so much for being so prompt. Traffic was
10 terrible.

11 (Laughter)

12 **THE COURT:** It was terrible. So I really do
13 appreciate the fact that you obviously made an effort to get
14 here on time.

15 So let's proceed. Call your next witness.

16 **MR. VILLAZOR:** Thank you, Your Honor. The government
17 calls Jerome DeFilippo.

18 **THE CLERK:** Will the witness please come forward.
19 Good morning.

20 **THE WITNESS:** Good morning.

21 **THE CLERK:** Please remain standing. Raise your right
22 hand.

JEROME DEFILIPPO, PLAINTIFF WITNESS, SWORN

THE WITNESS: I do.

THE CLERK: Please be seated.

Make sure you always speak into the mic.

THE WITNESS: Okay.

THE CLERK: Please state your full name. Spell your last name for the record.

THE WITNESS: Jerome DeFilippo, D-e-F-i-l-i-p-p-o.

DIRECT EXAMINATION

BY MR. VILLAZOR:

Q. Good morning.

A. Good morning.

Q. Could you please introduce yourself to the jury and tell them who you work for.

A. I'm Captain Jerry DeFilippo, San Francisco Police Department.

Q. Captain DeFilippo, do you work within a particular department within the police?

A. I work in the Staff Services Unit.

Q. Would you generally describe what the Staff Services Unit does.

A. In staff services I have personnel; backgrounds; payroll; medical liaison; ADA coordinator; department physician; the fleet unit; and permits unit.

Q. And, Captain DeFilippo, how long have you been a police

1 officer with the San Francisco Police Department?

2 **A.** A little over 25 years.

3 **Q.** By the way, where are you working, at what location?

4 **A.** The Hall of Justice, 850 Bryant.

5 **Q.** Captain DeFilippo, I would like to briefly talk about your
6 background.

7 So you graduated from the academy about 25 years ago?

8 **A.** Correct.

9 **Q.** Did you start off as a patrolman?

10 **A.** Yes.

11 **Q.** Can you explain to the members of the jury where you were
12 stationed as a patrolman.

13 **A.** I did my field training at Northern Station, my probation
14 at Mission Station. I transferred to the Tenderloin Task
15 Force, which is now called Tenderloin Police Station. I was
16 there until '96, when I got promoted to sergeant.

17 I went to Southern, Northern, back to Southern, all within
18 one year. And then transferred back to the Tenderloin in
19 mid-'97.

20 **Q.** And after you were at that last station, as a sergeant,
21 were you promoted again?

22 **A.** I was.

23 **Q.** Where were you pro- -- what were you promoted to, and
24 where?

25 **A.** 2006, to the rank of inspector. And then went to the

1 investigations bureau.

2 **Q.** What is the investigations bureau?

3 **A.** That's where you have your specific units at that time.

4 It's different now. I worked in the burglary unit, robbery
5 unit, and generally work unit.

6 **Q.** Were you promoted after that?

7 **A.** I was.

8 **Q.** What were you promoted to, and where?

9 **A.** In 2008 promoted to lieutenant. And I went to Ingleside
10 Police Station in early 2008.

11 In October 2008 I was transferred to narcotics division.
12 Lieutenant there. Day watch lieutenant.

13 In 2011 -- I'm sorry. In 2009 I was transferred to
14 Taraval Station with -- we had a new chief who redesigned our
15 investigations bureau. Every police station, at that point,
16 had an investigations unit. So I went to Taraval Station and
17 ran the investigations unit there.

18 **Q.** Did you move onto the internal affairs?

19 **A.** I did.

20 **Q.** Was that on the administrative side or criminal side?

21 **A.** Criminal side.

22 **Q.** Did you move on from IA?

23 **A.** I did.

24 **Q.** Where did you go?

25 **A.** The tactical unit. I was the day watch SWAT commander.

1 Q. Just explain to the jury what the tactical unit is.

2 A. It's the SWAT team.

3 Q. After that you were then promoted to captain?

4 A. I was.

5 Q. In your present position?

6 A. Correct.

7 Q. You mentioned when you were lieutenant you worked in the
8 narcotics division?

9 A. I did.

10 Q. That was October 2008 to about November 2009?

11 A. Yes.

12 Q. Can you explain what the narcotics division is.

13 A. Well, again, it was part of the Investigations Bureau.

14 We are broken down -- we still have a narcotics division.

15 So it basically investigates all narcotic or high-end,

16 mid-level to high-end narcotic trafficking and investigations.

17 Q. Captain DeFilippo, I would like to show you what's been
18 marked as Government Exhibit 1. Let me know when you have it
19 on your screen.

20 Do you recognize that?

21 A. Not here yet.

22 Q. Sorry.

23 A. Oath of Office.

24 Q. The Oath of Office?

25 A. Yes.

1 Q. What's the Oath of Office?

2 A. When you pass the academy or every rank when you get
3 promoted you take the Oath of Office.

4 Q. And is this what you took, this Oath of Office, when you
5 first became a San Francisco Police Department officer?

6 A. I don't remember verbatim, but I believe it is.

7 MR. VILLAZOR: Your Honor, at this time the
8 government moves Exhibit 1 into evidence.

9 THE COURT: Admitted.

10 (Trial Exhibit 1 received in evidence.)

11 (Document displayed.)

12 BY MR. VILLAZOR:

13 Q. Captain DeFilippo, you said you took this oath every time
14 you got promoted?

15 A. Correct.

16 Q. So when you became a sergeant, a lieutenant, and captain
17 you took that oath each time?

18 A. Yes.

19 Q. And is there also a tradition of taking that oath within
20 the San Francisco Police Department in other situations?

21 A. There is.

22 Q. Can you explain to the jury when you take that oath.

23 A. Uhm, when the police academy graduates their classes, it's
24 a public forum. The chief will ask any law enforcement
25 officers who would like to reaffirm their oath, if they can

1 stand and also take the oath with the graduating class.

2 Q. Did you recently take the oath with the graduating class?

3 A. I did.

4 Q. Was there any particular reason you were with that
5 graduating class?

6 A. My son graduated from the academy.

7 Q. Did you take your oath then?

8 A. I did.

9 Q. Captain DeFilippo, in your 25 years of experience and your
10 time taking these oaths on numerous occasions, can you explain
11 to the jury what it means to you to take this oath.

12 A. Sure.

13 It's really a commitment to a way of live. You know, to
14 myself, to the community. You know, uphold the laws of the
15 state of California, the Constitution. Just really set your
16 moral and ethical compass in a direction, and follow that path.

17 Q. Thank you, Captain.

18 I'd like to show you now what's been marked as Government
19 Exhibit 2. Let me know when you have it up on your screen.

20 A. Okay. I have it.

21 Q. Do you see that?

22 A. I do.

23 Q. What was Government Exhibit 2?

24 A. The police department's Informant Management Manual.

25 Q. Is there a particular, I guess, year down at the bottom

1 level?

2 **A.** Yeah. It's department manual 15, 2 of '98, was when it
3 was issued.

4 **Q.** Was this the manual in effect at the time you were at the
5 narcotics division?

6 **A.** Yes, it was.

7 **THE COURT:** Admitted.

8 (Trial Exhibit 2 received in evidence.)

9 **MR. VILLAZOR:** Thank you, Your Honor.

10 May we publish it to the jury, Your Honor?

11 **THE COURT:** Yes.

12 (Document displayed.)

13 **BY MR. VILLAZOR:**

14 **Q.** Captain DeFilippo, I'm going to ask Ms. Lane to turn to
15 page 4 of the exhibit. Not page 4 of the manual, but page 4 of
16 the exhibit. Do you see that?

17 **A.** Barely.

18 **MR. VILLAZOR:** I'll ask Ms. Lane to blow up the
19 "Purpose," part I, to the jury.

20 **BY MR. VILLAZOR:**

21 **Q.** Captain DeFilippo, ask you read that part of -- the
22 Purpose of the manual. Is the font big enough?

23 **A.** I think so.

24 **Q.** I have a paper copy.

25 **A.** Actually, I have one also.

1 Q. You have a copy okay?

2 A. Might be better.

3 Q. How's that? It's a little too big.

4 A. This might be a little better if I just read.

5 Q. Okay.

6 A. (As read:)

7 "The purpose of this manual is to
8 provide guidelines for the establishment,
9 use, and management of confidential
10 informants or/and or sources. The San
11 Francisco Police Department recognizes that
12 informants are an effective tool for law
13 enforcement. Members are encouraged to
14 develop criminal intelligence information
15 through the recruitment and proper
16 management of informants. All members
17 should look upon each contact with
18 witnesses, suspects, victims and citizens
19 as potential sources of information.
20 However, members are reminded that not
21 every person is suitable as a potential
22 informant. The Department's ultimate
23 responsibility to the community and that
24 need -- that need, must be balanced against
25 the need to gather intelligence -- or

1 criminal information, intelligence
2 information. Members who obtain criminal
3 intelligence information are responsible
4 for bringing that information to the
5 attention of the investigative unit best
6 equipped to use the information."

7 **Q.** Thank you.

8 Next, I would like to turn to part II, the Definitions.
9 Part A, 1 and 2. And I'll read that to you, Captain DeFilippo.
10 Let me know if I've read that accurately.

11 "Definitions the following terms and
12 their meanings are significant to informant
13 source management:

14 "1. Source. A person who provides law
15 enforcement with information with no
16 expectation of compensation (e.g. citizen
17 informant.)

18 "2. Informant. A person who provides
19 information as above, but who may be
20 motivated by a variety of expectations."

21 Did I read that correctly, Captain?

22 **A.** You did.

23 **Q.** I'm going to turn to page 5 of the exhibit, part B. Types
24 of Informants.

25 (Document displayed.)

1 Q. Do you see where I am, Captain DeFilippo?

2 A. I think so.

3 Q. Can you read the two types of information listed in part 1
4 and part 2.

5 A. "Untested Informants"?

6 Q. Yes, please.

7 A. (As read:)

8 "Untested informants are usually people
9 who are willing to provide information to
10 law enforcement personnel in exchange for
11 some kind of considerations (e.g. money, or
12 consideration from District Attorney's
13 Office on a pending case).

14 "2. Tested informants are usually
15 criminals or other people who have criminal
16 associates who have an established track
17 record of reliability with law enforcement
18 personnel. Tested informants are usually
19 motivated by monetary compensation."

20 Q. Thank you, Captain.

21 If we could turn now, to page 6 of the exhibit, part C.

22 And, captain, I'll read that to you. Let me know if I've read
23 it correctly.

24 (Document displayed.)

25 Q. "Classification of informants. Part 1."

1 **A.** Okay.

2 **Q.** (As read:)

3 "Classification of informants.

4 "1. Active informants are individuals
5 who physically participate in the purchase
6 of narcotics or contraband, and/or who are
7 physically present while introducing
8 undercover police officers to criminals, as
9 part of a Department-supervised, proactive,
10 covert investigation.

11 "A. The use of restricted use
12 informants as active informants is
13 forbidden unless there are exigent
14 circumstances. Members must obtain the
15 approval of his or her officer in charge
16 before using a restricted use informant
17 actively in a criminal investigation."

18 Did I read that correctly?

19 **A.** Yes.

20 **Q.** And is "restricted use informant" defined in the prior
21 section?

22 **A.** I believe it is, yes.

23 **Q.** Captain, could we turn to page 7 of the exhibit, part III,
24 Policy.

25 Do you see where we are?

1 **A.** Yes.

2 **MR. VILLAZOR:** If we could highlight part A of the
3 policy.

4 (Document displayed.)

5 **BY MR. VILLAZOR:**

6 **Q.** And, Captain DeFilippo, could you read that into the
7 record, part A.

8 **A.** Sure. (As read:)

9 "A. This informant policy demands consistency in
10 the use and management of confidential sources and
11 informants. Common sense and prudent management
12 dictate that the below-listed general policies be
13 adhered to in order to protect the informant and the
14 integrity of the individual officer handling the
15 informant, the Investigations Bureau and the San
16 Francisco Police Department.

17 *"Members are forbidden from departing from these*
18 *guidelines and may be subject to appropriate*
19 *discipline if they do so."*

20 **Q.** Captain DeFilippo, I'm going to go down to part C. And
21 I'll read that to you. (As read:)

22 "Officer/informant contacts will be of
23 a strictly professional nature. Extrinsic
24 social or business contacts (excluding
25 citizen informants) are expressly

1 prohibited. This Department policy
2 precludes contacts with informants and/or
3 their families outside the scope of
4 official business because it is important
5 that members remain unbiased while
6 conducting a criminal investigation. To
7 accomplish that goal, should a member be
8 contacted by a family member and/or a close
9 family friend who wishes to provide the
10 member with information regarding criminal
11 conduct, the member shall refer the
12 individual to another member of the
13 Department to conduct the follow-up
14 investigation."

15 Did I read that correctly, Captain?

16 **A.** Yes.

17 **Q.** If we go down to part E and F. If you could read that to
18 the jury once we've blown up E and F, please.

19 Can you read that to the jury.

20 **A.** Sure. (As read:)

21 "E. Unless there are exigent
22 circumstances, informant managers are
23 prohibited from physically contacting the
24 informants alone. On all physical
25 informant contacts, at least two offices

1 *must be present.*

2 "F. Productive contacts with
3 informants, if significant, will be
4 documented on a Source Debriefing Form or
5 on an Informant Contact/Payment form.
6 Nonproductive contacts will be reported in
7 the member's journal, notebook, or on the
8 Informant Contact/Payment form."

9 **Q.** Captain DeFilippo, I want to focus on E, real quick.

10 It says they're prohibited from physically contacting
11 informants alone?

12 **A.** Yes.

13 **Q.** Can you explain to the jury what's the rationale behind
14 that.

15 **A.** There's always a danger of the informant saying an officer
16 was inappropriate in transactions with them. It's best to have
17 a witness with you when you're contacting informants.

18 **Q.** If you would turn to page 8 of the next page, part G. And
19 I'll read that to you.

20 (Document displayed.)

21 **Q.** (As read:)

22 "G. The source/informant name will
23 never be used in an Establishment Report
24 (memorandum), Source Debriefing Report, or
25 on the Informant Contact/Payment form.

~~DEFILIPPO - DIRECT / VILLAZOR~~

1 Only a source/informant number may be used.
2 Names of informants and other identifying
3 information (e.g., Informant Identification
4 Record, rap sheet, CII), will be maintained
5 in the master file by the Commanding
6 Officer of the Investigations Bureau or
7 Narcotics Division, whichever is
8 applicable. The informant's working file
9 will contain the Establishment Report,
10 Source Debriefing Report and the
11 Contact/Payment record. The working file
12 documents will identify the informant by
13 her/his informant number only."

14 Did I read that correctly?

15 **A.** Yes.

16 **Q.** And, very quickly, the third line from the top says:
17 "Only a source/informant number may be used."

18 Do you see that?

19 **A.** Yes.

20 **Q.** Captain DeFilippo, what's a source/informant number?

21 **A.** Every informant is given a number for tracking purposes.

22 That way it keeps the identity of the informant
23 confidential. It keeps the informant safe. And the officer
24 works with that number as who they're working with. That's how
25 they're identified in all the documents except in master file.

1 Q. Is there any rhyme or reason to the number?

2 A. Yes, there is.

3 Q. Can you explain to the jury what that rhyme or reason is.

4 A. The number is given for the year and then the sequential
5 person or source being signed up.

6 For instance, we're in 2014. So the first number will be
7 one-four for 2014. There will be a dash. And the first
8 informant signed up would be zero-one. So it will be 14-01.
9 Next will be 14-02. And so on.

10 Q. And then on the sixth line it mentions that a master file
11 will be with the Commanding Officer of the Investigations
12 Bureau or Narcotics Division, whichever is applicable.

13 Do you see where I read that?

14 A. Yes.

15 Q. Narcotics Division, is that where were you working in
16 2008-2009?

17 A. I was.

18 MR. VILLAZOR: If we could highlight H. H.1. H.1.

19 BY MR. VILLAZOR:

20 Q. Captain, I think it's your turn. If you would mind
21 reading that to the jury.

22 A. (As read:)

23 "H. All informants *actively* involved
24 in criminal investigations, regardless of
25 their type of classification, shall be

1 advised at the onset that:

2 "1. They shall not violate criminal
3 law in furtherance of gathering
4 information, and/or providing services
5 while assisting the San Francisco Police
6 Department. Any evidence of such a
7 violation will be reported to the
8 appropriate law enforcement agency and may
9 hinder further use of this individual as an
10 informant."

11 **Q.** If we could go down to number 5 of H.

12 **A.** (As read:)

13 "5. All informants actively involved
14 in the purchase of narcotics or other
15 contraband shall be searched completely
16 (strip searched) for narcotics, money, or
17 other contraband before and after making
18 any controlled purchase. The searching
19 officer shall be of the same sex as the
20 informant."

21 **Q.** Captain DeFilippo, have you ever engaged in a controlled
22 purchase under these circumstances?

23 **A.** I have.

24 **Q.** Can you just explain what number 5 means in layman's
25 terms.

1 **A.** If you have an informant who has given information about,
2 say, a drug dealer, and they can make the buy for you, you take
3 the person into a location. You'll strip search the person,
4 make sure there's no drugs, money, or anything else on their
5 person, check their clothes.

6 You provide them with the buy money. They go and make the
7 purchase. They come back and give you what they bought.

8 They are strip searched again, make sure they didn't steal
9 any from what they bought. And then you write the report.

10 **Q.** Thank you, Captain.

11 If we could turn to part I now. (As read:)

12 "I. Informants shall sign and date a
13 Cooperating Individual Agreement form
14 acknowledging that he or she has read and
15 agrees to comply with the above conditions.
16 The informant's signature shall be
17 witnessed by two officers who shall sign
18 the agreement form as a witness. Should an
19 informant refuse to sign the agreement
20 form, members shall verbally admonish the
21 informant, verbatim, and the
22 Cooperating" -- next page, top paragraph --
23 "the Cooperating Individual Agreement will
24 be completed through audio taping. The
25 following statement shall be entered on the

1 Cooperating Agreement form, dated, and
2 signed by the informant manager and a
3 witnessing officer:

4 "On [date] C.R.I.#," blank, "was
5 advised of and agreed to the conditions set
6 forth on this form. C.R.I.#," blank,
7 "refused to sign the Cooperating Individual
8 form; however, the informant was verbally
9 admonished and his/her agreement was
10 tape-recorded."

11 Did I read that correctly?

12 **A.** You did.

13 **Q.** Captain, if you would now turn to part J and read that to
14 the jury.

15 **A.** (As read:)

16 "All interactions with the informant,
17 including his/her development,
18 establishment, and use should be carried
19 out with the highest regard for
20 confidentiality. When the informant is
21 brought into a police facility, it should
22 be done in a manner to attract minimal
23 attention both upon entering and leaving
24 the facility. While the informant is in
25 the police facility his/her activity shall

1 be monitored by the informant manager or
2 his/her designee. Documents and reports
3 concerning the identity of the informant
4 and his/her informant status should be kept
5 secure. Members should arrange to meet
6 their informants as much as possible at
7 neutral locations so as not to
8 unnecessarily disclose their informant
9 status to adverse parties."

10 **Q.** Captain, it says "minimal attention." Could you elaborate
11 a little more on what minimal attention is.

12 **A.** You wouldn't want to bring somebody through the front
13 door. Usually, if you had to bring an informant to a station
14 or your detail, you try to use side entrances, back doors. You
15 try to do it off hours.

16 So when the public or other, you know, potential criminals
17 don't recognize the person, because you don't want to put your
18 CI in danger.

19 **MR. VILLAZOR:** If we could turn to page 10 of this
20 exhibit, part IV, Procedures. Just that first paragraph.

21 (Document displayed.)

22 **BY MR. VILLAZOR**

23 **Q.** (As read:)

24 "IV. Procedures.

25 "Criteria have been established, which

1 must be strictly adhered to when developing
2 and establishing source/informants to be
3 used by the Police Department."

4 Did I read that correctly?

5 **A.** Yes.

6 **Q.** And on the accompanying part IV, does this set forth the
7 procedures that are supposed to be followed in terms of signing
8 up a confidential informant?

9 **A.** They are.

10 **Q.** I'm going to skip over to part B on page 11 of the
11 exhibit.

12 (Document displayed.)

13 **Q.** Part B, Detention and arrest of informants.

14 Do you see where I am?

15 **A.** Yes.

16 **Q.** And if you could go to part -- actually, part 2. Can you
17 read that to the jury.

18 **A.** (As read:)

19 "Members who have been arrested as
20 potential informants for criminal offenses
21 (other than felony warrant) who are seeking
22 to release an arrestee (potential
23 informant) before the booking process,
24 shall, either at the station or detail, or
25 at CJ9" -- which is county jail -- "obtain

1 the approval of their immediate supervisor
2 and the Officer-in-Charge or designee of
3 the members's unit/station. It is
4 permitted for the member to obtain verbal
5 permission from his/her supervisor and the
6 Officer-in-Charge or designee by telephone
7 before the release of the individual.
8 Arrestees who have outstanding felony
9 warrants for their arrest shall be booked.
10 The decision to release an arrestee with
11 outstanding warrants for misdemeanor or
12 infraction violations will be at the
13 discretion of the member with the approval
14 of his/her immediate supervisor and
15 Officer-in-Charge."

16 **Q.** Let my stop you right there.

17 "With the approval of his/her immediate supervisor."

18 Immediate supervisor, so, let's say, any given patrol person,
19 their immediate supervisor is typically who?

20 **A.** Would be a sergeant.

21 **Q.** Within the particular office that they work?

22 **A.** Correct.

23 **Q.** Or station that they work in?

24 **A.** Station or detail, yes.

25 **Q.** And officer-in-charge, where is the officer-in-charge?

1 **A.** That -- potentially at a station would probably be the
2 platoon commander, which is the rank of lieutenant.

3 **Q.** So the approval would have to be at the particular station
4 where the patrol person is designated?

5 **A.** Yes, if I read this right.

6 **Q.** Okay.

7 **A.** His or her commanding officer.

8 **Q.** The chain of command?

9 **A.** Chain of command, yes.

10 **Q.** And, Captain, I want to flip over to page 14 of the
11 exhibit, part D, Establishment. Part 1.

12 (Document displayed.)

13 **Q.** And I'll read that into the record. Let me know if I've
14 read it right.

15 "D. Establishment.

16 "1. The officer initiating
17 establishment shall first have the approval
18 of his/her immediate supervisor and the
19 officer in charge or his/her designee. The
20 member will contact the appropriate
21 Investigative Bureau or Narcotics
22 Division" -- again, that's where you
23 worked?

24 **A.** Correct.

25 **Q.** (As read:)

1 "To ascertain whether the informant has
2 a current informant manager and/or an
3 existing informant file. If the members
4 are unable to ascertain the name of the
5 potential informant's manager or they are
6 unsure if the potential informant has been
7 established as an informant, the member
8 shall complete an informant file and
9 forward the file to the appropriate
10 bureau/division (Narcotics or
11 Investigative). It will be the
12 responsibility of the Commanding Officer or
13 designee of the Narcotics Division or
14 Investigative Bureau to monitor the
15 informant file for duplication."

16 Did I read that correctly?

17 **A.** Yes.

18 **Q.** If you can skip down to part 4 of D. Can you read that to
19 the jury, Captain.

20 **A.** (As read:)

21 "If the potential informant does not
22 have an established informant file, the
23 member will adhere to the following
24 procedure."

25 **Q.** If you turn to the next page, and look at parts A, B, and

1 C.

2 (Document displayed.)

3 **A.** Okay. (As read:)

4 "A. The member will introduce the
5 potential informant to his or her immediate
6 supervisor once to allow the supervisor to
7 make an independent evaluation as to the
8 suitability of the individual.

9 "B. Once approved, the initiating
10 member shall prepare two separate files, a
11 master file and a working file. The master
12 file will contain pertinent information
13 regarding the identity of the informant,
14 and the working file will contain documents
15 concerning the investigation in which the
16 informant has provided information.

17 "C. Upon completing the master and the
18 working file, the member will forward the
19 files to his or her immediate supervisor
20 and the Officer-in-Charge or designee of
21 the member's respective unit, division, or
22 station for approval. Once files are
23 approved the files will be forwarded to the
24 commanding officer of the Investigations
25 Bureau or Narcotics Division, whichever

1 applies, and the informant will be issued
2 an informant number. The informant number
3 will be used to identify the informant in
4 any future written communication."

5 **Q.** Thank you, Captain.

6 Now, I want to talk about part C a bit more. During your
7 time in the narcotics division can you just explain to the jury
8 how that actually worked.

9 **A.** Sure.

10 The files will come out to the narcotics division for
11 narcotic informants. Review them to see if they're suitable,
12 met the criteria. Not on parole or probation, federal
13 probation. The violence, check their rap sheets.

14 If everything met the criteria, I give it to the
15 commanding officer, who was the captain of narcotics at the
16 time. He would look it over, approve it. At which time I
17 would enter the number -- or give a number, assign a number for
18 the informant and then advise the officers of the number.

19 **Q.** Captain DeFilippo, I'm going to show you what's been
20 marked as Government Exhibit 50. Five-zero. Let me know when
21 you have it on your screen.

22 **A.** It's up.

23 **Q.** Do you recognize that?

24 **MR. VILLAZOR:** If you could show, I guess, the "To"
25 and "From." Actually the whole front, the stamp.

1 **BY MR. VILLAZOR:**

2 **Q.** Do you recognize what Government Exhibit 50 is?

3 **A.** I do.

4 **Q.** What is that?

5 **A.** It's a memo to establish a CA.

6 **MR. VILLAZOR:** Your Honor, I would move Government
7 Exhibit 50 into evidence.

8 **THE COURT:** Admitted.

9 (Trial Exhibit 50 received in evidence.)

10 (Document displayed.)

11 **BY MR. VILLAZOR:**

12 **Q.** And, Captain DeFilippo, who is the "To" listed here?

13 **A.** To is Captain Stephen Tacchini, who is the commanding
14 officer of Mission Station.

15 **Q.** Who's it from?

16 **A.** Officer Edmond Robles.

17 **Q.** The date?

18 **A.** Friday, February 20, 2009.

19 **Q.** And the subject?

20 **A.** Informant Initiation.

21 **Q.** And to the right do you see there's, I guess, some stamps
22 there?

23 **A.** Yes.

24 **Q.** Could you explain to the jury what that is.

25 **A.** When a memo is submitted it goes through the chain of

1 command. It gets approval.

2 Every time it gets approved by a supervisor or a
3 commanding officer, it gets stamped. They either "yes,"
4 approved, or "no."

5 **Q.** Do you see your actual name and stamp over there?

6 **A.** I do.

7 **Q.** This was something you approved during the time you were
8 at narcotics division?

9 **A.** I did.

10 **Q.** Was this part of that part C we just talked about in the
11 informant manual?

12 **A.** Correct.

13 **Q.** You didn't actually meet the informant, did you?

14 **A.** Did not.

15 **Q.** Is that not part of the protocol?

16 **A.** No. I would not have met an outside unit's informant.

17 **MR. VILLAZOR:** If we could now show the first
18 paragraph of the part.

19 (Document displayed.)

20 **BY MR. VILLAZOR:**

21 **Q.** Captain, can you read that to the members of the jury.

22 **A.** (As read:)

23 "On 2/20/2009 CI# 09-08 was interviewed by Officer
24 Vargas star 979 and myself. The CI wants to give the
25 San Francisco Police Department information about

1 suspected narcotic dealers and suspects who are
2 illegally selling guns in San Francisco. After the
3 CI was debriefed, it was found that the information
4 given to us by the CI was accurate. The information
5 will be helpful to members of the department to solve
6 future criminal cases."

7 **MR. VILLAZOR:** Your Honor, at this time I would like
8 to read a stipulation in by the parties.

9 **THE COURT:** Yes.

10 **MR. VILLAZOR:** (As read:)

11 "Under the section SFPD Informant
12 Policy No. 6, Cesar Hernandez was signed as
13 an SFPD informant on February 20, 2009.
14 SFPD assigned him informant identification
15 number 09-08."

16 Thank you, Your Honor.

17 **THE COURT:** Thank you.

18 **BY MR. VILLAZOR:**

19 **Q.** Captain DeFilippo I'm going to show you now Government
20 Exhibit 51.

21 (Document displayed.)

22 **Q.** Do you see that?

23 **A.** I do.

24 **Q.** And what is that?

25 **A.** That is the Cooperating Individual Agreement.

1 **MR. VILLAZOR:** Your Honor, can we move that into
2 evidence?

3 **THE COURT:** Yes. 51 admitted.

4 (Trial Exhibit 51 received in evidence.)

5 (Document displayed.)

6 **BY MR. VILLAZOR:**

7 **Q.** Captain DeFilippo, if we could read paragraph 1 to the
8 jury.

9 **A.** (As read:)

10 "They shall not violate criminal law in
11 furtherance of gathering information or
12 providing services that may -- that any
13 evidence of such a violation will be
14 reported to the appropriate law enforcement
15 agency."

16 **Q.** And paragraph 5?

17 **A.** (As read:)

18 "Informants actively involved in the
19 purchase of narcotics or other contraband
20 shall be searched completely (strip
21 searched) prior to making the purchase.
22 The searching officer shall be of the same
23 sex as the informant."

24 **Q.** Captain DeFilippo, is this essentially verbatim from what
25 was a part in the informant manual?

1 **A.** It is.

2 **Q.** Now I'm going to show you Government Exhibit 70. Let me
3 know when you see it.

4 **A.** Yes.

5 **Q.** Do you recognize that?

6 **A.** I can barely --

7 **Q.** Sorry?

8 **A.** Could you blow it up.

9 This one I don't.

10 **Q.** Okay. We'll move on then.

11 **THE COURT:** I'm sorry, what --

12 **MR. VILLAZOR:** That was Government Exhibit 70, Your
13 Honor.

14 We'll move on. The parties have a stipulation. We can
15 talk about it later.

16 If we could go back to Government Exhibit 2. Go to page
17 22 of the exhibit. Part G, paragraph 1.

18 (Document displayed.)

19 **BY MR. VILLAZOR:**

20 **Q.** Could you read that to the jury.

21 **A.** Find it.

22 **Q.** It's page 19 of the informant manual.

23 **A.** Commanding officer responsibilities?

24 **Q.** Yes. Could you read part 1?

25 **A.** Sure. (As read:)

1 "The commanding officer of the
2 Investigations Bureau and the commanding
3 officer of the Narcotics Division will each
4 maintain an informant code book. The
5 Investigations informant number will be
6 prefaced with the letter 'I,' and Narcotics
7 Division informant number will be prefaced
8 with the letter 'N.' The informant code
9 book will contain the following information
10 (example attached):"

11 **Q.** Captain, this code book, is this what you were talking
12 about with the assignment of numbers?

13 **A.** Correct.

14 **Q.** Can you explain to the jury how that works.

15 **A.** Again, as I explained before, it's like an old ledger
16 book. Lines across it. The first line would be -- you know,
17 up at the top of the page is the year.

18 This year would be 2014. So then first one would be
19 14-01. It would have the name of the officer handling the
20 informant. I think -- it's been a long time since I've seen it
21 but I believe it's the date of initiation. There's several
22 columns. It goes across to date of deactivation.

23 So it's just a ledger tracking each informant.

24 **Q.** Is there a corresponding name with the particular number?

25 **A.** The names aren't in there. The names are only in the

1 master file of the informant. But the officer who's signed
2 them up, that officer's name is in the book.

3 **Q.** Lastly, Captain, if we could turn to page 23 of the
4 exhibit, page 20 of the informant manual, part I, Payments to
5 Informants.

6 Could you read that to the members of the jury.

7 **A.** Okay. (As read:)

8 "Documentation of payment to informants
9 is critical, and all payments shall be
10 recorded on the appropriate receipt form
11 (SFPD 312 form). All payments to
12 informants shall be witnessed by another
13 member. Any person who is to receive
14 payments shall be established as an
15 informant as outlined in this manual. This
16 includes informants who are not -- who are
17 information only informants. The amount of
18 payment shall be" commen- --

19 Excuse me.

20 **Q.** "Commensurate."

21 **A.** (As read:)

22 "... commensurate with the value of
23 services and/or information provided, and
24 shall be based on the following factors:

25 "a. The level of the targeted

1 individual, organization or operation.

2 "b. In narcotic-related cases, the
3 amount of actual or potential seizure of
4 contraband. NOTE: Because payments based
5 on seized evidence are not universally
6 accepted in the courts, the investigator
7 shall not promise the informant any
8 specific amount of remuneration based on
9 evidence seized.

10 "c. The significance of the
11 contribution made by the informant in the
12 investigation.

13 "d. Whether or not the informant
14 testified in court."

15 And:

16 "e. The level of jeopardy into which
17 he or she has been placed."

18 **Q.** Captain DeFilippo, is there a designated source of money
19 that any particular SFPD officer is supposed to go to, to give
20 an informant money?

21 **A.** Yes.

22 **Q.** Where is that source?

23 **A.** Narcotics Division has funds for informants, contingency
24 funds for that, just this.

25 **Q.** Is that the only source where police officers are supposed

1 to be getting money?

2 **A.** I believe the Investigations Bureau, at the time, also had
3 funds for investigations with informants.

4 **Q.** Are those the only two sources?

5 **A.** Correct.

6 **Q.** Should they be getting money from any seizures?

7 **A.** No.

8 **Q.** Should they be getting anything beyond money?

9 **A.** They should not.

10 **MR. VILLAZOR:** Just a moment, Your Honor.

11 **BY MR. VILLAZOR:**

12 **Q.** Captain DeFilippo, any money that is seized during
13 seizures, what are they supposed to do with that?

14 **A.** It gets booked.

15 **Q.** "Booked." What does that mean?

16 **A.** It's evidence. So, like any other piece of evidence, the
17 police report is written. It's listed in the police report.
18 It goes through the procedure of booking, documenting, and sent
19 to the property clerk.

20 **MR. VILLAZOR:** Thank you, Captain. I have no further
21 questions.

22 **THE COURT:** Is that true of narcotics, as well?

23 **THE WITNESS:** Narcotics, they get booked also, but
24 it's a different process. That gets booked in a special block
25 container, and it goes out to the lab for testing.

1 **THE COURT:** Would that be all narcotics that were
2 seized?

3 **THE WITNESS:** Yes.

4 **THE COURT:** Thank you.

5 Cross. Yes.

6 **CROSS EXAMINATION**

7 **BY MR. GETZ:**

8 **Q.** Good morning.

9 **A.** Good morning.

10 **Q.** What did you mean when you said being a police officer is
11 a way of life?

12 **A.** Well, you kind of set your moral compass, do the right
13 thing, and hopefully follow it.

14 **Q.** It's more than just a 9:00 to 5:00 job; isn't it?

15 **A.** It is.

16 **Q.** It really is around the clock, because at all times you
17 bear in mind this is what you stand for. Do you agree?

18 **A.** I do.

19 **Q.** In fact, police officers are authorized to carry their
20 guns while off duty; are they not?

21 **A.** They are.

22 **Q.** Do you agree with me that police officers are encouraged,
23 even when they're off duty, to serve the public by being
24 observant, by watching what's going on around them, and by
25 protecting the citizens?

1 **A.** Yes.

2 **Q.** Do you agree with me that being a police officer is not
3 just a profession and not just work, but it also becomes
4 somewhat social in that you enjoy the brotherhood of your
5 fellow officers?

6 **A.** Yeah. Yes.

7 **Q.** I'm just asking you whether you noticed that police
8 officers tend to socialize more than, say, insurance salesmen
9 or lawyers or any other group you can name.

10 They're a group; wouldn't you say?

11 **A.** Yeah. But I have no reference to any other groups, so I
12 wouldn't know.

13 **Q.** All right. Do you agree that being a police officer means
14 there's a certain amount of loyalty that you have to your
15 brother officers?

16 **A.** I'm not sure what you mean by that.

17 **Q.** Loyalty in the sense that you're all in this together and
18 that you're all working toward a common goal and a common
19 purpose as police officers?

20 **A.** I'm not sure where you're going, but we're all here to do
21 the right thing.

22 **Q.** All right. I guess, you were talking about the oath
23 someone takes to be a police officer. And one of the things it
24 refers to is defending against enemies. Do you remember that?

25 **A.** Foreign and domestic.

1 Q. Who are the enemies?

2 A. That's a good question.

3 Q. It could be anyone; right?

4 A. Could be.

5 Q. It could be a brother officer theoretically; couldn't it?

6 A. Could be.

7 Q. Okay. I'd like to ask you a couple of questions about the
8 Informant Management Manual. And in terms of who can be an
9 informant, I'd like to start with that.

10 An informant could be somebody with no police background;
11 correct?

12 A. Correct.

13 Q. An informant could be somebody who's been arrested before;
14 correct?

15 A. Could be, yes.

16 Q. An informant could be somebody who's under 18,
17 theoretically?

18 A. It would be a restricted use, but it's possible.

19 Q. It could be somebody who's over 18 and is on state parole;
20 correct?

21 A. Could be.

22 Q. It could be somebody who's on federal parole?

23 A. Could be.

24 Q. It could be somebody who just got out of prison?

25 A. Pretty much anybody could be a source.

1 Q. An informant could be anybody. There isn't anyone in your
2 manual who is expressly excluded from being an informant. Do
3 you agree with that?

4 A. I mean, any -- depends on the circumstances. You can use
5 information from almost anybody.

6 Q. Sure. Now, you were talking, a little bit, about policy.
7 And the policy section of the manual is essentially the general
8 guideline that officers are to follow, correct?

9 A. Yes.

10 Q. But as to each policy, the officer has to exercise
11 individual judgment and determination, correct?

12 A. I would say so.

13 Q. So, for example, one thing you read into the record when
14 you were -- we were talking about policy -- it's on page 7, I
15 believe, of your book there. If you want to look at the policy
16 section III.

17 A. Sure.

18 Q. But one of the things you were talking about was that the
19 officer informant contacts should be of a strictly professional
20 nature.

21 It doesn't really give a definition of what "professional
22 nature" is, correct?

23 A. I don't think there's a definition of what that is, no.

24 Q. No. But we've already established, and you established
25 five minutes ago when you testified, that the profession of

1 being a police officer is all-encompassing, correct?

2 **A.** I believe so.

3 **Q.** Twenty-four hours a day, right?

4 **A.** Could be.

5 **Q.** You were proud when your son swore the oath to become a
6 police officer; were you not?

7 **A.** I was.

8 **Q.** And is it fair to say that, no doubt, one of the reasons
9 why he wanted to become a police officer is because of his
10 great love and respect for you and what you do; correct?

11 **A.** I like to think so.

12 **Q.** So in this book here, you know, the manual talks about the
13 exercise of professional judgment. That would include
14 everything in a person's life, not just the one shift where the
15 person is on duty as a police officer. Do you agree with that?

16 **A.** I would.

17 **Q.** Okay. The policy section that you are looking at -- I'm
18 looking at III, subsection C, if you need to refresh your
19 recollection.

20 It talks about extrinsic social and business contacts
21 being expressly prohibited, correct?

22 **A.** Where was that again?

23 **Q.** It was III, subsection C, on page 7. It's page 4 of your
24 manual. Talks about extrinsic social and business contacts
25 being prohibited. Do you remember that?

1 **A.** Yes.

2 **Q.** But nowhere in the manual does it say what extrinsic
3 social or business contacts are; correct?

4 **A.** I don't think it's broken down, no.

5 **Q.** Okay. And the -- it goes on to say that the department
6 policy precludes contact with informants outside the scope of
7 official business; correct?

8 **A.** I believe so.

9 **Q.** All right. But nowhere in the manual does it say what
10 official business is; correct?

11 **A.** Well, I wouldn't go to a barbecue with an informant.

12 **Q.** Right. But you might do something that's way beyond the
13 scope of the shift that you were just finishing; correct?

14 **A.** I'm not sure what you mean.

15 **Q.** Well, there's no definition, there's no limit on what is
16 official business when you're a police officer. Do you agree
17 with that?

18 **A.** No.

19 **Q.** You don't agree that 24 hours a day you're capable of
20 being a police officer? I thought we already went through
21 that.

22 **A.** Capable. But, I mean, I'm taking my business home. I'm
23 not really sure where we're going here.

24 **Q.** Okay. Well, let me try another question on you --

25 **A.** Okay.

1 Q. -- and see if I can do a better job.

2 Let's go down to III, subsection E. Talks about exigent
3 circumstances being needed before you can meet one-on-one with
4 an informant; correct?

5 A. Yes.

6 Q. But nowhere does it say what exigent circumstances are in
7 that context; correct?

8 A. It doesn't.

9 Q. All right. Now, the manual makes numerous references to
10 protecting the identity of the informant and trying to make
11 sure that the informant's identity is not disclosed to people,
12 because that might endanger the informant's safety.

13 Do you agree with that?

14 A. I do.

15 Q. In fact, the manual is so precise on that regard there's
16 even a section in which officers are warned not to tell the
17 name of the informant to the prosecutors; right?

18 A. Correct.

19 Q. So, just to put this in context, the police officers --
20 I'm speaking generally now.

21 The police officers gather evidence. And when it comes
22 time to go to court they give the evidence to the prosecutors,
23 who are assigned the duty of coming to court and prosecuting
24 these people who are being charged; correct?

25 A. Yes.

1 Q. Yet the police officers who are providing this raw
2 evidence and material have a duty to make sure that even the
3 prosecutor doesn't know the name of the informant; correct?

4 A. Well, there are steps in place where that can be given to
5 the prosecutor. And it would be an in camera hearing with the
6 Judge to determine whether or not the person named will be able
7 to testify.

8 So, yes, there are steps in place that you can disclose
9 who it is.

10 Q. I'm going to get to that in a moment, but I'm trying to do
11 it step by step. You and I know all this stuff, but I'm trying
12 to do it in a chronological way.

13 I'm asking you, first of all, whether there's a duty that
14 the police officers not tell the prosecutors, at least
15 initially, who the informant is; correct?

16 A. There's a duty to keep that information confidential for
17 the safety of the informant, yes.

18 Q. You say "confidential." I'm being precise here. I'm
19 saying the duty of confidentiality means that, generally
20 speaking, the police officer doesn't even tell the prosecutor
21 the name of the informant; right?

22 A. In many cases that's true.

23 Q. Okay. So there can be a situation where -- and it's
24 usually the defense lawyer asks the Judge to make the police
25 say who the informant is. And then there's a procedure to

1 still protect the name of the informant, which you called "in
2 camera"; correct?

3 **A.** Yes.

4 **Q.** And that's the procedure where, away from the eyes of
5 anyone who might see and the ears of anyone who might listen,
6 the police officer who knows the name of the informant goes in
7 the back, to the Judge's robing room, and says to the Judge
8 what the information is about the informant, in an attempt to
9 keep it from becoming publicly known; correct?

10 **MR. VILLAZOR:** Your Honor, I'm going to object.
11 That's complex, compound.

12 **THE COURT:** Well, just to take the mystery out of
13 this, because it sounds like something is being done in the
14 back room.

15 (Laughter)

16 **THE COURT:** It's not actually done in the back room.
17 It's frequently done in court.

18 But Counsel is quite right, the public and other people
19 may be excluded from that session if there is the disclosure of
20 confidential information initially.

21 I would also say, ladies and gentlemen of the jury, that
22 while that process excludes the public it does not exclude the
23 court reporter. And so what is told to the Judge during that
24 process is recorded by the court reporter. It's placed in a
25 transcript. The transcript is sealed. That means it's not

1 disclosed to the public. And it may possibly not be disclosed
2 to the defense depending on the outcome of the hearing. And
3 it's part of the record.

4 So, eventually, depending on what occurs with respect to
5 the case, it may be disclosed at least to a panel of judges
6 later on who are reviewing anything that happened in the
7 District Court.

8 So that's the process. It's not a mystery. It's been
9 done for many, many years. It's a well-recognized manner in
10 which confidential information is disclosed and is dealt with.

11 Thank you.

12 Go ahead, Mr. Getz.

13 **MR. GETZ:** Thank you.

14 **BY MR. GETZ:**

15 **Q.** You mentioned that -- and you relied upon subsection E of
16 the policy when you were talking about this -- unless there are
17 exigent circumstances there should be two officers present when
18 the informant is met somewhere.

19 Do you remember that testimony?

20 **A.** Yes.

21 **Q.** Do you agree with me that the fact of the second officer
22 being present doesn't decrease but, instead, increases the
23 chance that the informant could be revealed?

24 **A.** I would say no.

25 **Q.** When the informant is out in the field somewhere and is

1 approached by two plainclothes officers, instead of one, that
2 does not increase the chance that someone is going to notice
3 that?

4 **A.** I would say if you're meeting with an informant it's
5 usually not a chance meeting. You're setting that up away from
6 public eyes. So I would say no.

7 **Q.** All right. Let's -- let's talk about what happens when
8 the informant is brought to a police facility. And I just want
9 to briefly touch upon this.

10 If you need to refresh your recollection, this is
11 subsection J of the manual. Page 6 on the manual, page 9 of
12 the exhibit.

13 Do you remember we were talking about bringing the
14 informant to the facility?

15 **A.** Yes.

16 **Q.** You talked about how this should be done in a manner to
17 attract minimal attention. Remember?

18 **A.** Yes.

19 **Q.** That could include actually meeting the informant outside
20 the facility instead of within the confines of the building?
21 Do you agree with that?

22 **A.** Yes.

23 **Q.** Okay. The last couple of questions I have for you have to
24 do with page 25 of the exhibit, the Cooperating Individual
25 Agreement.

1 Can you get that in front of you in case you need to
2 refresh your recollection.

3 **A.** Page number, by chance?

4 **Q.** I think it's 25 at the bottom.

5 **THE COURT:** You're talking about the individual
6 agreement, the cooperation agreement?

7 **MR. GETZ:** Yes, the Cooperating Individual Agreement.

8 **BY MR. GETZ:**

9 **Q.** Do you have that handy?

10 **A.** Yes.

11 **Q.** Okay. So just to be clear about what the meaning of these
12 rules are, the first rule is that the informant shall not
13 violate any criminal law.

14 Do you agree with that? That's the first rule?

15 **A.** Yes.

16 **Q.** As a practical matter, that rule applies to everybody in
17 the State of California. Do you agree?

18 **A.** I do.

19 **Q.** Number 2 refers to the fact that they have no official
20 status as employees of the San Francisco Police Department;
21 correct?

22 **A.** Yes.

23 **Q.** However, they do have official status as an informant;
24 right?

25 **A.** Well, they're an informant. We don't pay -- they're not

1 on the books per se. But I guess so.

2 **Q.** Because once somebody signs the Cooperating Individual
3 Agreement they are officially an informant, and they have that
4 status compared to all the other people who haven't signed.

5 Am I right?

6 **A.** Well, anybody can be an informant. A citizen can give
7 information. So is everybody an informant? Does everybody
8 have an official status as a source? I don't know.

9 **Q.** My precise question is: There are informants, such as the
10 one you just mentioned, who might give information, but there
11 is a category of people who have signed the Cooperating
12 Individual Agreement. And once they sign, they have that
13 status. Yes?

14 **A.** As a signed informant they are, yes.

15 **Q.** Going down to number 4, when they sign this Cooperating
16 Individual Agreement, they are told here, in number 4, that
17 there are no promises of leniency regarding the disposition of
18 any criminal case they might have; correct?

19 **A.** Yes.

20 **Q.** Generally speaking, while the informant knows there are no
21 promises of leniency or immunity from prosecution, that is
22 exactly what the informant wants. Do you agree?

23 **A.** Well, they can be motivated by many different things. You
24 know, easy on a case they got. Money in their pocket. I can't
25 get in the mind of every informant.

1 Q. Right. But you've been doing this a long time, and you
2 are in narcotics. And I'm asking you whether, generally
3 speaking, informants are trying to work off their case and get
4 a benefit for their cooperation. Yes?

5 A. I remember a lot, back then, just wanted cash.

6 Q. All right. And what else did they want besides cash?

7 A. Nothing that I know of.

8 Q. No? When an informant is working off an informant's beef,
9 they are hoping for leniency on their case; correct?

10 A. If we assume the informant just became an informant
11 because they got arrested on something else, that's true.

12 Q. And what percentage of the informants, in your experience,
13 who sign the cooperating individual agreement are hoping to
14 work off their beef? What percentage? 5? 20? 50? A
15 hundred? What would you say?

16 A. I have no idea.

17 Q. You have no idea.

18 How many informants have you worked with?

19 A. I've never signed up an informant.

20 Q. Pardon?

21 A. I've never signed up an informant.

22 Q. You never signed one up?

23 A. Never.

24 Q. All right. Last, but not least, it is the responsibility
25 of the informant to stay in contact with his or her informant

1 manager. Right?

2 **A.** Yep.

3 **Q.** And the informant manager is the police officer who's
4 handling that informant, correct?

5 **A.** Yes.

6 **Q.** And we have this rule because the San Francisco Police
7 Department sponsors a connection, a relationship, communication
8 between the informant and the police officer; correct?

9 **A.** There should be communication, yes.

10 **Q.** There has to be in order for the thing to work; right?

11 **A.** Correct.

12 **MR. GETZ:** Okay. Thank you.

13 **THE COURT:** Ms. Caffese, any questions?

14 **MS. CAFFESE:** Yes.

15 **CROSS EXAMINATION**

16 **BY MS. CAFFESE:**

17 **Q.** Good morning, Captain.

18 **A.** Good morning.

19 **Q.** Captain, I notice on the people's exhibit -- excuse me,
20 the government's Exhibit here, 2, that the manual is dated
21 February of 1998. Is that correct?

22 **A.** It is.

23 **Q.** And am I correct that it has not been updated for over ten
24 years?

25 **A.** It was --

1 Q. Go ahead.

2 A. -- updated, I think, last year.

3 Q. Right.

4 A. So it's been quite a while.

5 Q. So, as of the time period in which Officer Robles was
6 working in Mission Station, the end of 2008, 2009, this manual
7 had not been updated; is that a fair statement?

8 A. It is.

9 Q. All right. And I also note, sir, that on page 2 of the
10 government's exhibit there's some acknowledgments. Do you
11 notice that there, sir?

12 A. Yes.

13 Q. And there are a number of officers that have contributed
14 to this manual.

15 A. There are.

16 Q. And Lieutenant Michael Puccinelli was one of the
17 contributors; correct?

18 A. He was.

19 Q. And you know him --

20 A. Very well.

21 Q. -- is that right?

22 A. Yes.

23 Q. And you respect him --

24 A. I do.

25 Q. -- is that fair?

1 **A.** Yes.

2 **Q.** All right. Now, you, sir, were not a contributor to this
3 manual back in February of 2008; is that correct?

4 **A.** I was not.

5 **Q.** Is it fair to say it's my understanding you were not a
6 contributor to the more current manual that was updated after
7 2009?

8 **A.** Correct.

9 **Q.** All right. Now, what training, if you know, did
10 Mr. Robles, Officer Robles, receive when he was assigned to
11 plainclothes at the Mission Station in December of 2008?

12 **MR. VILLAZOR:** Objection. Foundation.

13 **THE COURT:** Well, the question is -- I'm going to
14 allow the question because he can answer. He's either aware of
15 it or not aware of it.

16 **THE WITNESS:** I don't know his training.

17 **BY MS. CAFFESE:**

18 **Q.** All right. And do you know whether or not this exhibit
19 that we've been referring to, the manual, Exhibit 2, was ever
20 actually given to Officer Robles when he went to Mission
21 Station the end of 2008, sir?

22 **A.** I don't know.

23 **Q.** All right. Now, my understanding is that you have never
24 signed up an informant, correct?

25 **A.** Correct.

1 Q. And am I correct that you have, therefore, never used an
2 informant yourself, sir?

3 A. I work with officers who have, but I've never had one.

4 Q. All right. Fair enough.

5 So is it fair enough to say that there are a lot of
6 practical considerations that go into using an informant on the
7 streets?

8 A. I'm not sure what you mean.

9 Q. You don't understand my question?

10 A. No.

11 Q. All right. There are a lot of rules in here?

12 A. Correct.

13 Q. I'm saying Exhibit 2 here; right?

14 A. Yes.

15 Q. There's, you know, the books. And then there's what
16 happens on the streets. The real world, as we say sometimes.
17 Is that right?

18 A. You've got to follow the rules. I'm not sure -- so you've
19 got to do it right.

20 Q. Fair enough. You've never actually used an informant
21 yourself, personally?

22 A. I have not.

23 Q. Correct. So you don't have any personal firsthand
24 experience of what it's like in the real world to use an
25 informant. True statement?

1 **A.** True statement.

2 **Q.** Now, would you say, as a captain, that there are often
3 violations that police officers make as it relates to the
4 administrative rules in the department? Fair enough to say?

5 **A.** Yes.

6 **Q.** And when a rule, such as a rule that is in the manual
7 here, is broken that, perhaps, is a violation of an
8 administrative rule; is that right?

9 **A.** Yes.

10 **Q.** It's not a federal crime though; correct?

11 **A.** No.

12 **Q.** Okay.

13 **MR. VILLAZOR:** Objection. Foundation.

14 **THE COURT:** Well, I'm going to allow it. Go ahead.

15 **BY MS. CAFFESE:**

16 **Q.** Now, sir, I would like to just go through a few items in
17 the manual that you spoke of, sir.

18 **A.** Sure.

19 **Q.** Now, and the purpose of the manual here on page 1, is it
20 fair to say that the use of informants is highly encouraged?

21 **A.** At times it's necessary. I don't know if it's encouraged.
22 But at times it's necessary.

23 **Q.** Fair to say that it's necessary -- if you want to use that
24 word as opposed to encourage -- because it's a tool that law
25 enforcement, particularly undercover cops, use to try to catch

1 bigger fish, bigger crimes; is that right?

2 **A.** Any officer. Not just undercover. But, yeah, you try to
3 find the big guy, if you will.

4 **Q.** It's a tool that officers use to abate crime in our
5 communities; is that right?

6 **A.** Yes.

7 **Q.** And some of these informants, obviously, the reason why
8 they have valuable information is because they, too, live lives
9 of crime. Is that right?

10 **A.** I would say so, yes.

11 **Q.** What better way to know what crime is being committed than
12 to go to the source; is that right?

13 **A.** Yes.

14 **Q.** Now, I noticed that there were a lot of different
15 definitions here that counsel went over, but there was no
16 definition of a confidential informant in the manual.

17 Is that true, sir?

18 **A.** I never noticed. I would have to say all informants
19 should be kept confidential.

20 **Q.** Do you know why -- if you don't it's okay, but I'm just
21 curious -- why isn't there a definition of a confidential
22 informant in the manual?

23 **A.** I believe the manual itself addresses the confidentiality
24 of the informant, of any informant.

25 **Q.** Yes, sir. There are, however, types of informants listed

1 in the manual, on page 2 here, that are defined, correct?

2 **A.** Yes.

3 **Q.** Yes. And I won't go over all of them again because it's
4 here in the exhibit that's been introduced into evidence. But
5 they are several that are defined. And confidential informant
6 is not one that is defined. True statement?

7 **A.** Correct.

8 **Q.** All right. Is there any reason why -- I should ask,
9 what's the difference between types of informants and, on page
10 3, classifications of informants?

11 **A.** I didn't write the manual so I'm not a hundred percent
12 certain.

13 **Q.** Fair. Excuse me. Fair enough. Thank you, sir.

14 Now, I want to go to page 3 again, in number 5 there. And
15 I know that in this manual it says that you're not supposed to
16 use people with, like, criminal convictions to do buy/busts,
17 for example. Is that true?

18 **A.** Say that again, please.

19 **Q.** Correct me if I'm wrong. It's my understanding that
20 you're not supposed to use people with criminal convictions to
21 do, like, buy/bust operations?

22 **A.** Sure you can.

23 **Q.** You can. Okay. Excuse me. I misunderstood you then.

24 The informants give information for a variety of reasons;
25 is that right?

1 **A.** I believe so, yes.

2 **Q.** And sometimes it's for a financial motivation; is that
3 right.

4 **A.** I believe so.

5 **Q.** Sometimes they want protection from -- have you ever
6 heard, for example, of an informant coming in to a police
7 station and wanting protection from the police?

8 **A.** I have not.

9 **Q.** You have not. Okay. Fair enough.

10 Now, I do want to skip over to page 5. Before, actually,
11 I get to some specific questions on that page there, sir, my
12 understanding -- and correct me if I'm wrong -- if a police
13 officer arrests somebody that they believe may have valuable
14 information, they can release that person; is that right?

15 **A.** Under certain circumstances, yes.

16 **Q.** Okay. So what would the circumstances be, if you know,
17 sir?

18 **A.** I can refer back to the manual. But you have to have
19 approval from your supervisor and officer-in-charge. It
20 couldn't be a felony warrant. I can't recall the rest. I
21 believe that's the gist of it.

22 **Q.** All right. You couldn't -- like, for example, if somebody
23 had an outstanding felony warrant you couldn't just let them
24 go; is that right? Because, obviously, they were wanted by the
25 authorities, and you need to book them and go through the

1 process; right?

2 **A.** Correct.

3 **Q.** But, for example, if somebody is arrested because, let's
4 say, they are in a place where there are narcotics found, and
5 the police want to find out what that person knows about,
6 perhaps, another investigation, it's okay to talk to that
7 person and find out if they know anything about other narcotics
8 investigations that might be going on; is that right? There's
9 nothing wrong with that?

10 **A.** No. You should be interviewing or speaking with anybody
11 you stop/detain; find out if there's a crime being committed.

12 **Q.** And it would be okay for the police officers to release
13 that person, that they had detained or arrested, for the
14 purposes of doing investigation in another case; fair enough?

15 **A.** Sure. But there's steps you have to take.

16 **Q.** A lot of this, would you agree, is dependent on an
17 officer's discretion?

18 **A.** Yes.

19 **Q.** It's not a perfect science; fair enough?

20 **A.** Fair enough.

21 **Q.** And you have to make decisions as a police officer based
22 on your training and experience over the course of your career.
23 Is that fair enough to say?

24 **A.** Yes.

25 **Q.** Now -- all right.

1 Now, I do have some specific questions about people's
2 Exhibit 50 and 51 here. You saw those before, sir. Let me
3 just -- I know.

4 **THE COURT:** Which one are you referring to?

5 **MS. CAFFESE:** Let me refer, first, to 50, Exhibit 50.
6 I believe that's been introduced into evidence.

7 **BY MS. CAFFESE:**

8 **Q.** And I'll refresh your recollection here, sir.

9 50 is the memorandum that was written by Edmond Robles,
10 star number 1467 --

11 **THE COURT:** Maybe we can put it on the screen.

12 **MS. CAFFESE:** Excuse me. Can you do that?

13 **THE COURT:** Well, somebody can. There.

14 **MS. CAFFESE:** Thank you. Excuse me.

15 (Document displayed.)

16 **THE COURT:** There we go.

17 **BY MS. CAFFESE:**

18 **Q.** I'll give you a copy too. Does that work better?

19 **A.** Either/or.

20 **Q.** Now, this is a memorandum that's kept in the CI file;
21 right?

22 **A.** Yes.

23 **Q.** And it's supposed to be kept in the CI file; is that
24 right?

25 **A.** Yes.

1 Q. And if my memory serves me right you were in narcotics at
2 the time that Ed was at Mission; is that right?

3 A. I believe so.

4 Q. So that document should have been both in his file and
5 your file; is that right?

6 A. Yes.

7 Q. And that was done; is that right?

8 A. As far as I know, yes.

9 Q. Okay. And I notice here, obviously it's been established,
10 but you approved this; is that correct?

11 A. Correct.

12 Q. And you were a lieutenant at the time; is that right?

13 A. Correct.

14 Q. Okay. And this was a proper SFPD document that was
15 executed by Officer Robles, as it relates to CI 09-08; is that
16 right?

17 A. Yes.

18 Q. Nothing wrong with this; correct?

19 A. No.

20 Q. Proper police procedure; correct?

21 A. Yes.

22 Q. Now, Exhibit 51. Do you want a copy? You have it up
23 there.

24 A. It's up here.

25 Q. Okay. Probably remember it there.

1 Now, this is, again, the Cooperating Individual Agreement;
2 right?

3 **A.** Yes.

4 **Q.** And it has a signature of the informant here; right?

5 **A.** It does.

6 **Q.** And it has a signature -- do you know whose signature that
7 is?

8 **A.** The informant?

9 **Q.** No, no. Excuse me, the officer, the witness officer.

10 **A.** I can't make out those signatures.

11 **Q.** Okay. But this is also a proper document relating to
12 CI -- the same CI, if I'm not -- actually, his number is not on
13 here. But your understanding it's the same CI?

14 **A.** I believe it all came out in a packet to narcotics.

15 **Q.** All right.

16 **A.** It's all proper.

17 **Q.** Part of this document indicates that the informant is not
18 supposed to commit any crimes; is that right?

19 **A.** It is.

20 **Q.** All right. Now, would you agree that it's difficult, as a
21 practical matter, to know whether or not your informant is
22 continuing to commit crimes?

23 **A.** You can't be with your informant 24 hours a day, so.

24 **Q.** Okay. And it wouldn't be surprising, I would imagine,
25 over your years of experience, to find out that informs do

1 sometimes continue to commit crimes?

2 **A.** Sometimes it's a way of life for them.

3 **Q.** Now, I just -- I don't know how familiar you are with
4 Mission Station back in '08-'09, but I do have a few questions
5 for you there. Okay?

6 **A.** I know the general way it operated. I didn't work there.

7 **Q.** Had you ever been to Mission Station in '08-'09, sir, if
8 you remember?

9 **A.** I don't recall.

10 **Q.** If I were to ask you if you knew how the file cabinets
11 were maintained at Mission Station at the time would you be
12 able to answer that question?

13 **A.** No.

14 **Q.** Do you know, do you know whether or not different officers
15 work with the same CIs?

16 **A.** I have no idea it. I don't know.

17 **Q.** Did you want to give it a try there, or not? It's okay.

18 **A.** Well, a CI doesn't belong to an individual officer. Any
19 officer can use it. Just follow the rules. You got to check
20 to see if they're already signed up. So I don't know if
21 they're being used by other officers or not.

22 **Q.** Would you know this and would you agree that it would not
23 be unusual for different officers to use the same CI or
24 informant?

25 **A.** It's possible.

1 Q. And, incidentally, as we go over these different
2 classifications, I mean, just because an informant or somebody
3 gives you a tip about crime that might be happening doesn't
4 mean they get paid for it; is that right?

5 A. Correct.

6 Q. Right. I mean, some do, if they get signed up; right?

7 A. Yes.

8 Q. Okay. But, certainly, an officer isn't required to go to
9 the source funds and pay somebody who claims they're an
10 informant every time they tell 'em there's a crime that's about
11 to occur. True statement?

12 A. Yes.

13 Q. Okay. Incidentally, is the designated source for the
14 money in the manual here, sir?

15 A. I'm sorry?

16 Q. The designated source of where the money comes from to pay
17 the CIs in the manual we've been talking about here.

18 A. I'm not sure. The funds were at -- for narcotics
19 informants were at Narcotics. And for investigations was at
20 the Investigations Bureau. I'm not sure it's outlined in here
21 or not.

22 Q. Right. You don't know whether or not there's a
23 description of how these funds are used, or where they're kept
24 as contained in this exhibit here we've been talking about?

25 A. I don't recall reading it in there.

1 **MS. CAFFESE:** Okay. I think I'm done. Thank you,
2 sir.

3 **THE WITNESS:** Thank you.

4 **THE COURT:** Any redirect?

5 **MR. VILLAZOR:** A few questions, Your Honor.

6 **THE COURT:** Okay.

7 **REDIRECT EXAMINATION**

8 **BY MR. VILLAZOR:**

9 **Q.** Captain DeFilippo, you testified on cross-examination that
10 you know one of the -- the authors of the informant manual?

11 **A.** Yes.

12 **Q.** And who is that?

13 **A.** Mike Puccinelli.

14 **Q.** So you knew him well?

15 **A.** Fairly well, yes.

16 **Q.** Is he a police officer with real-world experience?

17 **A.** Yes.

18 **Q.** Captain DeFilippo, during your time at Narcotics Division
19 that was when again?

20 **A.** Late '08 to late '09.

21 **Q.** Do you recall, ballpark, of how many informants were
22 signed during your time there?

23 **A.** Guessing the area of maybe 40.

24 **Q.** Forty?

25 **A.** Roughly. Not certain.

1 Q. Do you know how many police officers were signing up, give
2 or take, those 40 or so informants?

3 A. Without looking at the ledger, I wouldn't know.

4 MR. VILLAZOR: Actually look to -- go to Exhibit 2
5 again, page 7. If we could highlight part III, Policy, number
6 A.

7 (Document displayed.)

8 BY MR. VILLAZOR:

9 Q. Could you read the first sentence again, to the jury.
10 It's page 4 of the actual manual.

11 A. On policy?

12 Q. Part III, part A. Can you read that first sentence?

13 A. (As read:)

14 "This informant policy demands
15 consistency in the use and management of
16 confidential sources and informants."

17 BY MR. VILLAZOR:

18 Q. And could you read the second sentence.

19 A. (As read:)

20 "Common sense and prudent management
21 dictate that the below-listed general
22 policies be adhered to in order to protect
23 the informant and the integrity of the
24 individual officer handling the informant,
25 the Investigations Bureau, and the San

1 Francisco Police Department."

2 Q. Captain DeFilippo, we had talked about payments to
3 informants?

4 A. Yes.

5 Q. Does it say anywhere here where or what kind of payments
6 should be made to the informants, what form of currency?

7 A. I don't think so.

8 Q. Is that an example of where you just use common sense in
9 applying that?

10 A. I believe so. Anytime they're paid it goes on the form.
11 That's supposed to be the cash gotten from the contingency fund
12 from Narcotics Bureau.

13 Q. And Mr. Getz asked you whether or not social contacts were
14 expressly defined in the informant manual; remember that?

15 A. I do.

16 Q. Is this another example of where common sense applies?

17 A. I would say so.

18 MR. VILLAZOR: No further questions.

19 THE COURT: Anything further?

20 MR. GETZ: No, thank you.

21 MS. CAFFESE: No, Your Honor.

22 THE COURT: Okay. Thank you very much, Captain.

23 THE WITNESS: Thank you.

24 THE COURT: Ladies and gentlemen, we're going to take
25 a recess now. We will be in recess until 20 to 11:00.

1 Remember the admonition given to you. Don't discuss the case,
2 allow anyone to discuss it with you, form or express any
3 opinion.

4 You can leave your binders right in your chair. Take your
5 notes with you.

6 (Jury out at 10:23 a.m.)

7 **THE COURT:** Okay. Let the record reflect the jury
8 has retired.

9 I guess the issue, I assume that Mr. Hernandez is the next
10 witness; is that right?

11 **MR. HEMANN:** Yes, Your Honor.

12 **THE COURT:** The question is whether he can be
13 cross-examined on the domestic violence charge?

14 **MR. HEMANN:** Yes, Your Honor.

15 **THE COURT:** And I've read the government's submission
16 in that regard. Any further argument?

17 **MS. CAFFESE:** Yes, Judge, excuse me.

18 I think the issue is whether or not Mr. Hernandez has a
19 felony conviction. And that's the issue, I think, we're
20 debating, if I'm correct here.

21 **THE COURT:** Well, that's part of it.

22 **MS. CAFFESE:** Part of it.

23 **THE COURT:** That's not the whole thing.

24 **MS. CAFFESE:** If I can address that, if I may?

25 **THE COURT:** Sorry?

1 **MS. CAFFESE:** If I can address that first, Your
2 Honor.

3 **THE COURT:** Sure. I haven't seen the rap sheet.

4 **MS. CAFFESE:** Can I give it to you?

5 **THE COURT:** Sure. Why don't you have it marked as an
6 exhibit but not admitted in evidence.

7 Well, I don't want to spend a lot of time on this. It
8 seems to me that he was convicted of a misdemeanor. He
9 ostensibly violated a condition of his probation, or whatever
10 they call it. Parole. I don't know.

11 He didn't go to prison. He went to county jail. So I
12 would assume that he would be put on probation as a condition
13 of -- once released. Isn't that correct?

14 **MS. CAFFESE:** May I, Judge? If I could, I think,
15 this might clarify.

16 **THE COURT:** Yes, go ahead.

17 **MS. CAFFESE:** In 1993, according to his rap sheet, he
18 was convicted of a misdemeanor 273.5, which can be charged
19 either as a misdemeanor or felony. Excuse me. He pled guilty.
20 He received three years court probation, nineteen days county
21 jail.

22 **THE COURT:** Yeah.

23 **MS. CAFFESE:** In 1996 -- and the Court can look at
24 the court numbers. They are different court numbers.

25 **THE COURT:** He committed some other offense.

1 **MS. CAFFESE:** Of 273.5 as a felony.

2 **THE COURT:** I don't know that. Where do you see
3 that?

4 **MS. CAFFESE:** I think I highlighted it there, Judge.
5 He received two years state prison suspended, three years
6 probation.

7 And then in 1998 he picked up another felony --

8 **THE COURT:** Okay. Wait, wait. Count One. I'm
9 sorry. Count One I'm now looking at, I guess, 16912701, what
10 you've highlighted. It's 11351 of the Health and Safety Code.
11 It was a narcotics conviction. And it says, "Disposition:
12 convicted. Convicted felony. Sentence: Two years prison."

13 **MS. CAFFESE:** Judge, the reason why he was given two
14 years prison is because of instead of being sentenced to
15 imposition of sentence suspended on the felony domestic
16 violence, the Court had imposed those two years but suspended
17 it. Meaning --

18 **THE COURT:** Well, how do I know that? How do I
19 know -- how do I know he wasn't sentenced on the narcotics
20 violation?

21 **MS. CAFFESE:** Because he was on probation for the
22 felony --

23 **THE COURT:** A lot of people are. How do --

24 **MS. CAFFESE:** You're absolutely right. But it seems
25 to me he was probably given concurrent time.

1 The real issue, Judge, is whether or not he has a
2 conviction for --

3 **THE COURT:** No. Actually, the real issue, to tell
4 you the truth, is whether or not its probative value, with
5 respect to his truth-telling abilities, is appropriate for
6 impeachment. That's, in the Court's view, the real issue.

7 And it's not. Domestic violence conviction does not go to
8 a person's truth-telling abilities or credibility in that
9 sense.

10 So to the extent that your argument prevails as to whether
11 it's a felony -- and I think it's a questionable issue -- I
12 would exclude it, in any event, because it's not -- number one,
13 it's remote. And, number two, it doesn't go to his truth
14 telling -- doesn't go to credibility. So to the extent the
15 Court has discretion in that regard, I exclude it.

16 **MS. CAFFESE:** The government has indicated that it
17 was intending to ask Mr. Hernandez about his domestic violence
18 conviction --

19 **THE COURT:** They're not going to ask it in light of
20 this ruling.

21 **MS. CAFFESE:** Well, Judge --

22 **THE COURT:** If they do, Ms. Caffese, if they do
23 you're free to go after it.

24 **MS. CAFFESE:** Thank you.

25 **THE COURT:** You're not free to raise it.

PROCEEDINGS

1 **MR. HEMANN:** Thank you, Your Honor.

2 **THE COURT:** Okay.

3 **MS. CAFFESE:** I think there is an issue of a limiting
4 instruction. I don't know whether the Court wants to take that
5 up now.

6 **THE COURT:** Limiting as to what?

7 **MS. CAFFESE:** There will be some evidence, I believe,
8 with other officers this afternoon that --

9 **THE COURT:** I'll deal with it later.

10 **MS. CAFFESE:** Thank you.

11 **MR. HEMANN:** Thank you, Your Honor.

12 (Recess taken from 10:29 to 10:42 a.m.)

13 (The following proceedings were held outside of the
14 presence of the Jury)

15 **THE CLERK:** Remain seated. All rise.

16 (The following proceedings were held in the presence of
17 the Jury)

18 **THE COURT:** Please be seated.

19 Let the Record reflect all parties present; the jury is
20 present.

21 Please call your next witness.

22 **MR. HEMANN:** Your Honor, the United States calls
23 Cesar Hernandez.

24 **THE CLERK:** Will the witness please come forward and
25 take the witness stand.

CESAR HERNANDEZ, PLAINTIFFS' WITNESS, SWORN

THE CLERK: Please be seated. Make sure you always speak into the mic.

THE WITNESS: Okay.

THE CLERK: Please state your full name; spell your last name for the Record.

THE WITNESS: My name is Cesar Hernandez.

DIRECT EXAMINATION

BY MR. HEMANN:

Q Can you spell your last name, please?

A De Leon Hernandez.

Q Can you please spell your last name? Spell it.

A H-E-R-N-A-N-D-E-Z.

MR. HEMANN: Your Honor, as you can tell, Mr. Hernandez speaks with a very pronounced Spanish accent. We have a standby interpreter who is in the courtroom in case he needs assistance in answering any questions or providing any answers.

The interpreter's in the front row in the gallery. We can have her stay there or we can ask her to sit up next to Mr. Hernandez.

THE COURT: Yeah, why don't you come forward and at least have a seat.

MR. HEMANN: Can I get this chair over here, Your Honor, and bring it (Indicating)?

1 **THE COURT:** Sure.

2 **MR. HEMANN:** Thank you.

3 **THE CLERK:** Good morning.

4 **THE INTERPRETER:** Good morning.

5 **THE CLERK:** Please raise your right hand.

6 (Interpreter placed under oath)

7 **THE INTERPRETER:** My name is Ines Swaney. I-N-E-S
8 SE-W-A-N-E-Y. I'm a California state- and federally-certified
9 Spanish court interpreter.

10 **THE COURT:** So, how do you want to proceed? We can
11 proceed in English, and if it appears that the witness either,
12 one, doesn't understand a question, or we don't understand his
13 response, use the interpreter.

14 How do you want to proceed? I'll leave it up to you.

15 **MR. HEMANN:** We would like to proceed that way,
16 Your Honor. And wait until there's an instance in which
17 Mr. Hernandez either doesn't understand the question or has
18 difficulty articulating the answer, and then allow him to
19 consult with the interpreter.

20 **THE COURT:** Okay. Mr. Hernandez, do you understand
21 that if you don't understand a question, you should not answer
22 the question, and you should indicate that you need the
23 interpreter to assist?

24 Do you understand that?

25 **THE WITNESS:** Yeah, I understand that, sir.

1 **THE COURT:** Okay.

2 **MR. HEMANN:** And in the meanwhile Ms. Swaney can just
3 have a seat, and we'll request her presence as needed.

4 **THE COURT:** Go ahead.

5 **MR. HEMANN:** Thank you, Your Honor.

6 **THE COURT:** Thank you.

7 **BY MR. HEMANN:**

8 **Q** Mr. Hernandez, good morning.

9 **A** Good morning, sir.

10 **Q** And just to be clear, when you're answering questions,
11 please speak slowly --

12 **A** Okay.

13 **Q** -- and carefully so that the court reporter can understand
14 what you are saying. Okay?

15 **A** Okay, sir.

16 **Q** Mr. Hernandez, do you know Ed Robles?

17 **A** Yes, sir.

18 **Q** Do you know Ian Furminger?

19 **A** Yes, sir.

20 **Q** Do you know an individual by the name of Rey Vargas?

21 **A** Yes, sir.

22 **Q** How do you know these three people?

23 **A** They are police officers in the Valencia, the Police
24 Station Mission, 17th and Valencia.

25 **Q** The police station in the Mission?

1 **A** Yes.

2 **Q** And did you have some sort of relationship with these
3 three individuals?

4 **A** Well, I worked with Mr. Robles and with Mr. Vargas.

5 **Q** And the relationship that you had with Mr. Robles and
6 Mr. Vargas was what?

7 **A** An informant.

8 **Q** An informant?

9 **MR. GETZ:** Based on the answer I just heard, I'm
10 asking for the limiting instruction. He said he had a
11 relationship with Mr. Vargas and Mr. Robles.

12 **THE COURT:** I understand that, but the question is --
13 I don't know what the evidence is. If the -- if there --
14 testimony that it only relates to -- to Mr. Robles, as an
15 example, of course, I'll give a limiting instruction.

16 But I don't know what theory the government has in
17 introducing whatever they're going to introduce. I have to
18 listen to it. Whether it would be legally applicable to
19 your client; it may not be.

20 **MR. GETZ:** Thank you.

21 **THE COURT:** I just don't know. I don't know what it
22 is.

23 So, ladies and gentlemen, let me just explain the process
24 for a moment.

25 Testimony is going to be forthcoming involving some

1 incidences or incident. The testimony may or may not apply to
2 both of the Defendants. I don't know yet.

3 And, what Mr. Getz is requesting is that the testimony, if
4 it relates only -- that is, if it can only be considered by you
5 as it relates to Mr. Robles, it should be limited to that.
6 But, we don't know what the testimony is yet. I'm sitting
7 here, just like you. And so I'm going to wait and see how it
8 comes in and what it is.

9 It may be that after the testimony is elicited in full,
10 that I would give a limiting instruction. Sometimes I do it
11 before; sometimes I do it in the middle. Sometimes I do it at
12 the end. Because, it's -- it's difficult to look at the
13 picture in advance and say, "Oh, you know, that's just as to
14 one or two the other." So just keep an open ear, open mind,
15 listen very carefully what the witness says.

16 And I'll probably revisit this subject as the testimony
17 proceeds.

18 Okay.

19 **MR. HEMANN:** Thank you, Your Honor.

20 **THE COURT:** Thank you.

21 **BY MR. HEMANN:**

22 **Q** Do you see Mr. Robles here in the courtroom,
23 Mr. Hernandez?

24 **A** Yes, sir.

25 **Q** Where is he sitting?

1 **A** In the corner, in that table (Indicating).

2 **MR. HEMANN:** Your Honor?

3 **THE COURT:** Let the Record indicate he has identified
4 the Defendant, Edmond Robles.

5 **BY MR. HEMANN:**

6 **Q** And do you see Mr. Furminger sitting here in the
7 courtroom?

8 **A** Yes, sir.

9 **Q** And where is he sitting?

10 **A** Right there (Indicating), next to the -- right there
11 (Indicating).

12 **Q** Next to the gentleman with the beard?

13 **A** Yes, yes.

14 **THE COURT:** Okay let the Record reflect he has
15 identified the Defendant, Ian Furminger.

16 **BY MR. HEMANN:**

17 **Q** You said earlier that you were an informant. Do you
18 remember that?

19 **A** Yes, sir.

20 **Q** What do you mean when you say that you were an informant?

21 **A** I'm -- give you tips, the guys who sell drugs.

22 **Q** Who did you give tips to?

23 **A** First I go to Mr. Robles and then Mr. Vargas.

24 **Q** And you gave tips to them about what?

25 **A** Drug dealers.

1 Q Drug dealers?

2 A Yeah.

3 Q And in what part of San Francisco?

4 A Mission. Um, in San Francisco, we go like, um, most of
5 the time in the Mission area but we goes -- we go to Oakland
6 one time, we go to North Beach one time. All the areas of
7 San Francisco.

8 Q And did you know drug dealers in San Francisco?

9 A Yeah.

10 Q Who did you first become an informant for?

11 A Mr. Robles.

12 Q And do you remember how it was that you first met
13 Mr. Robles?

14 A Yes, sir.

15 Q Can you tell the jury when the first time you ever saw
16 Mr. Robles was?

17 A I live in the hotel in -- between 17 and 16 and Mission.
18 A few hotels over there; I live in one.

19 And one morning, somebody knock my door (Indicating), so I
20 was sleeping, was in the morning.

21 Q Can I stop you for a moment, Mr. Hernandez?

22 A Yes.

23 Q What kind of a hotel was it?

24 A It's -- the cheaper hotel in San Francisco, it's a
25 bathroom in the hall. Kind of --

1 Q There is a bathroom in the hall?

2 A Yeah. There's --

3 Q How large was the room?

4 A Like right here, (Indicating), small, very small room.
5 Only the bed, maybe this, to right there (Indicating). Very
6 small rooms.

7 MR. HEMANN: Your Honor, the witness is indicating
8 about the distance between at the end of the jury box and the
9 door back to chambers.

10 THE WITNESS: Yeah, that door right here, the bed
11 right there (Indicating) and that's it. Very small.

12 MR. HEMANN: And between the witness box and the
13 wall.

14 THE WITNESS: Yeah.

15 THE COURT: So noted. So noted.

16 BY MR. HEMANN:

17 Q So it's a small room?

18 A It's very small room, yes.

19 Q And you said there was a knock on the door one morning?

20 A Yeah, in the morning, so I was sleeping. So I wake up and
21 say, "Who is this?"

22 And they say, say something like "Manager" or whatever.

23 Q "Manager"?

24 A That is what I understand them say, "Manager." So I was
25 in underwear, I always sleep in underwear, and I open the door

1 and I see only the face (Indicating), to see what did they
2 want, the manager. But -- was the officer, with another
3 officer. Was two.

4 **Q** Okay, so there were two officers. Were they in the
5 hallway?

6 **A** Yes.

7 **Q** Okay. When you opened the door --

8 **A** I'm just looking, (Inaudible) show my face (Indicating).

9 **Q** Okay. And you peeked out?

10 **A** And he pushed the door (Indicating).

11 **Q** Who pushed the door?

12 **A** Mr. Robles.

13 **Q** And did the officers then come into the room?

14 **A** Yes.

15 **Q** Okay.

16 **A** They come to the room, and I say, "What is the problem?"

17 And he asked me if I can show some kind of ID. And I have
18 only the City College ID.

19 I got with it me, I don't know if you want to see
20 (Indicating), college ID.

21 **Q** When he came into the room, did he just stand there and
22 say "May I please see some ID," or do something with you?

23 **A** He just pushed me aside. And I say, "What do you..."

24 I don't remember exactly what happened, just like asked me
25 for ID. And I said, "What is the problem?"

1 And then he asked me if I was in prison. I told him yes,
2 I was in prison and I do parole, but now I'm not probation, I'm
3 not parole, I'm --

4 **Q** Okay. So at the time he came into your room, you were no
5 longer on probation or parole.

6 **A** No, sir.

7 **Q** Did you tell Mr. Robles that?

8 **A** I told him that and then he called on the radio.

9 **Q** He called what on the radio?

10 **A** My name, check every -- I don't know. I don't know how
11 they work but they have -- ask what my name and my birthday and
12 everything.

13 **Q** After he did that, what was the next thing what happened?

14 **A** They start break my room apart.

15 **Q** When you say breaking your room apart, what do you mean?

16 **A** Search for everything.

17 **Q** Okay.

18 (Reporter interruption)

19 **THE WITNESS:** Excuse me, ma'am.

20 They break everything apart. And at one point they find a
21 little bag (Indicating), I don't know where, on the -- between
22 the carpet, the carpet and the wall, an open bag, empty bag,
23 nothing in there.

24 **BY MR. HEMANN:**

25 **Q** And when you're indicating, you're indicating with your

1 fingers --

2 **A** Yeah, little bag, little one (Indicating).

3 **Q** About an inch? One inch?

4 **A** Yeah, like this much (Indicating). But just opened in
5 half (Indicating).

6 **Q** Okay.

7 **A** And, and they say I'm in trouble. This is -- I don't
8 know, I don't remember, but they put handcuffs on me for that.

9 **Q** Let me ask you this. Do you remember the little bag?

10 **A** Yes.

11 **Q** Did you recognize these type of little bags?

12 **A** Yes.

13 **Q** How did you recognize them?

14 **A** Most of the people use them for put a drug inside.

15 **Q** Okay. Putting drugs inside the bag?

16 **A** Yeah, most of the guys use for that, yeah. A little bag.
17 I think everybody use for that. I don't think why else we can
18 use it.

19 **Q** That's the only use for those little bags, isn't it?

20 **A** At that time, yes, everybody use that for -- but that's
21 what, until I leave, it's only people that use drugs, it's
22 cheap hotel.

23 **Q** Was that your little bag?

24 **A** Yes -- it's mine?

25 **Q** Your bag?

1 **A** No, it's not mine.

2 **Q** So, Mr. Robles, he showed you the bag, and what did he say
3 to you?

4 **A** I don't remember exactly what he said but he put handcuffs
5 on me, and he said, "You're under..." How he said I'm under
6 arrest for that.

7 But next he called a police officer on the radio, and come
8 a van, police van. He take me downstairs. With the handcuffs.
9 And take me to the police station. A police in uniform, a
10 lady.

11 **Q** A lady police officer?

12 **A** Yes.

13 **Q** And she drove you to you the police station?

14 **A** 17, one block.

15 **Q** So, very close.

16 **A** Yeah, very close.

17 **Q** When you got to the police station, what happened at the
18 police station?

19 **A** When I came to the police station the lady put me in the
20 police station, you come this way, from the parking lot
21 (Indicating), and this -- that's something like the chair
22 (Indicating), but they have a pole so they put the handcuffs on
23 there.

24 **Q** Okay. So it was like a bench?

25 **A** Yes, like a bench.

1 Q You say there is a hole. What was the hole for?

2 A No. The pole.

3 Q Oh, pole. Okay.

4 A Yeah, put the handcuffs in there.

5 Q Okay.

6 A Yes, something like that. I don't know. They put the
7 handcuffs over there (Indicating).

8 Q So you were handcuffed to a bench.

9 A Yeah.

10 Q Okay.

11 A Yeah, something like that. And I meet with the officer,
12 Mr. Rey Vargas.

13 Q What was Mr. Vargas wearing when you got there that day?

14 A He wear police uniform but not -- not the police uniform,
15 just one -- just one -- (Indicating)

16 Q Like a one-piece uniform?

17 A Yeah, with the star (Indicating), in the -- in the
18 uniform.

19 Q Like, embroidered into --

20 A Yes, yes. Like the deputies use in jail. Like, yes.

21 Q Okay. What was Mr. Vargas -- how did you come to meet
22 Mr. Vargas that day?

23 A I don't know. I come over there, and she start touching
24 me, like, a little racy, like, "Oh you come back, you swimming,
25 right, you come back from Mexico."

1 I be like, "No I never been Mexico before in my life."

2 He's like, "You come back, remember, I arrest you last
3 month, and I put you in jail and then I pull you, so you come
4 back, swimming..."

5 **Q** Slow down, slow down.

6 **A** All right. And not the kind -- so, I don't know what he's
7 talking about. He say he arrest me on a bicycle one month
8 before, in -- there's a Burger King on 30 and Mission between
9 Valencia. Yeah.

10 **Q** And was that true?

11 **A** No, sir. No. I never seen that guys in my life.

12 **Q** So did Mr. Vargas do anything with you after you were
13 handcuffed there?

14 **A** Yeah, he put me -- fingers, printings (Indicating).

15 **Q** He did your fingerprints?

16 **A** Yes, sir.

17 **Q** Okay. Now on that occasion, after he took your
18 fingerprints, did you speak in addition -- speak with
19 Mr. Robles again, that day?

20 **A** After that, like, I don't know. Thirty minutes, ten
21 minutes, 20, I don't remember. They took me to the little
22 office inside the police station. Inside.

23 **Q** So there is a small office in the police station?

24 **A** There's a little small office (Indicating), have one desk
25 over there, another desk (Indicating). And cabinets. Very

1 small. And a TV.

2 **Q** Was it about the same size as that hotel room you were
3 staying at?

4 **A** No, maybe -- oh, yeah, maybe, maybe, maybe a little bit,
5 little bit. Because a big desk over there, one desk, I don't
6 remember exactly but there's a desk, cabinets and a TV. And,
7 and this side (Indicating) there is a lot of boxes, backpacks
8 and everything.

9 **Q** And that the first time you had ever been in that room?

10 **A** The first time I been in that room.

11 **Q** Did you ever go in that room again, after that?

12 **A** Yes. A lot of times.

13 **Q** How many times?

14 **A** You know what? I been in that police station before, when
15 I go to jail. The first time, in '98. I was -- in '99 I be in
16 that, I think so, yes.

17 **Q** Okay. So that was maybe the second time you were in that
18 room.

19 **A** Yes.

20 **Q** Okay. After that, did you go in that room many times?

21 **A** Yeah, a lot of times.

22 **Q** Okay. So, who brought you into that little room, that
23 first day?

24 **A** I don't remember it was Mr. Robles or Mr. Vargas, but it
25 was one of them.

1 Q Okay. And then when you went into the room, did you speak
2 with Mr. Robles and Mr. Vargas?

3 A Yes, sir. Mr. Robles.

4 Q You've got to let me finish everything I say, and then you
5 go. Okay?

6 A Okay, sir.

7 Q All right. When you went into the room, did you speak
8 with somebody?

9 A Yes, sir.

10 Q Who did you speak with?

11 A Mr. Robles.

12 Q Okay. And what did Mr. Robles tell you?

13 A He told me I'm in trouble for that evidence. He got it in
14 another big bag at that moment. The little bag, he put in
15 another big bag. He's like, "You see that, you're in trouble."

16 And, before that I do courts and everything, so I know I'm
17 not in trouble. I know this, nothing. This is, like, no case.
18 So, I be comfortable. I don't -- I don't care, you know,
19 whatever he say.

20 And he is like, "Okay. This is what we are going to do.
21 You call somebody, and ask for drugs..." I mean, "You call
22 somebody, you're free to go."

23 And I say "What I have to call, what do I have to..."

24 And he say, "You know, you call somebody, I let you go."

25 We had that argument for maybe ten, twenty minutes, and I

1 say...

2 **Q** You said what?

3 **A** I said, "No. I don't know. I don't know what you're
4 talking about." And, that kind of -- that kind of things.

5 **Q** Okay. So you told him you didn't know what he was talking
6 about.

7 **A** Yes.

8 **Q** But, did you know what he was talking about?

9 **A** Yeah.

10 **Q** What was he talking about?

11 **A** He want I call somebody, ask for drugs, and then -- in the
12 past, I heard when somebody a snitch like that, they give you a
13 marked bill, they give you a bill to buy. They call them
14 "marked bill."

15 **MS. CAFFESE:** Excuse me, Judge. I'm going to object
16 to that, as hearsay.

17 **THE COURT:** Sustained.

18 **BY MR. HEMANN:**

19 **Q** So, you said that he was asking you to be an informant. A
20 snitch.

21 **A** Yeah. Call somebody and turn in, turn in. And then I go
22 free.

23 **Q** Okay.

24 **A** But, but -- yeah.

25 **Q** Did you agree to do that on that occasion?

1 **A** No.

2 **Q** Why not?

3 **A** Because at that moment, no, they don't have nothing on me.
4 That's nothing. I'm -- I don't want to cooperate with police
5 in the first thing.

6 **Q** Okay.

7 **A** And I know they don't have nothing on me, so -- I let him
8 talk.

9 **Q** Okay. So about how long did you talk to him?

10 **A** He told me: This is what we are going to do. He told me,
11 because I said "No, whatever you want, put me in jail, put me
12 in jail, no problem."

13 So at one point he is like, okay, he forget my life, he
14 like: "Okay. This is what are we going do. I'll let you go,
15 I'll give you my number, I'll expect for you call, looking for
16 somebody..." because I told him I don't know nobody. He said,
17 "Looking for somebody, and give me a call."

18 **Q** Did you notice anything about the phone number?

19 **A** Yeah, he give me one phone number with another area.

20 **Q** With another area?

21 **A** Yeah. Was no 415.

22 **Q** It was not a -- the phone number was not a 415.

23 **A** No. I remember that.

24 **Q** So he gave you his phone number; he let you go.

25 **A** Yes. He told me, "Call me."

1 And I be like, "Okay, whatever. I'm leaving."

2 **Q** So you left?

3 **A** I left, yeah.

4 **Q** Did you just walk right out the front door of Mission
5 Station?

6 **A** Yes.

7 **Q** Okay.

8 **A** I come back to my room, and my room was -- shoo --

9 **Q** You said "shoo." What does that mean?

10 **A** Like, we been -- like, a big problem. My room is like,
11 like I have a war inside that room. It's like my clothes
12 everywhere, yeah. Yeah, like, I don't know.

13 **Q** Okay. After that, did you stay in the same room for a
14 while?

15 **A** Yeah. I stay in the same room because I know they don't
16 have nothing on me, no problems, so, it's no big deal. Empty
17 bag.

18 **Q** Did you see Mr. Robles again in that room?

19 **A** Yes, sir.

20 **Q** About how long after?

21 **A** I can say no more that a week.

22 **Q** Okay.

23 **A** I really don't remember how many days, but it was a short
24 time. See, the first day, after I come back to the hotel, the
25 next day, I start to be like, cool, you know. I clean that

1 room very good, I don't want to -- in case they come back. I
2 looking, maybe somebody forget something in the past, so I
3 clean everything good.

4 So I feel more and more safety. And I say, "Okay, I don't
5 have nothing now, it's just clean."

6 **Q** So, did Mr. Robles come back?

7 **A** Yes. One day, again in the morning, I was sleeping. In
8 the morning like 8:00 or 9:00, I don't remember.

9 At that time they knocked on the door very bad, bap, bap,
10 bap, and then try to open the door. And I wake up and I see
11 somebody -- because the window have a fire escape.

12 **Q** Okay, so you heard a bang on the door, and you looked at
13 the window. And what did you see in the window?

14 **A** Somebody in the window. They have a fire escape
15 (Indicating). But my door they tried to open, and I said
16 what -- you know, so I jumped from the bed and I opened the
17 thing.

18 At that moment, I see they come back with a lot of
19 officers.

20 **Q** Okay.

21 **A** Four or five officers.

22 **Q** Okay. And, did they come -- did you let them into the
23 room?

24 **A** So when I opened that thing, they come inside my room.

25 **Q** And what happened when they came into your room?

1 **A** They start search everything.

2 **Q** What were you wearing?

3 **A** Underwear, I only sleep in the underwear every time.

4 **Q** Okay.

5 **A** And they say put the pants on, Mr. Robles told me, "Put
6 your pants on." So I put on my pants.

7 And that morning I feel like a little angry, like, why
8 they do that to me, so I told him, "Why you do that to me? I'm
9 not probation no more."

10 And he like, "Why you don't call me? Why you don't call
11 me? Dude."

12 And at one point I be like, "Why you do that to me," you
13 know. So he pushed me on the bed (Indicating) and he told me,
14 he told me, like, if I want to go to jail or something like
15 that. And I told him, "Why? I don't have nothing."

16 And he say, "I can -- I can find something -- anything I
17 want on you."

18 (Reporter interruption)

19 **THE WITNESS:** "I can find something, anything on
20 you." And they mention a gun. And I be like, "I don't have
21 nothing."

22 And he's like, "Well, it's your word, it's your word
23 against all these police officers" (Indicating).

24 **BY MR. HEMANN:**

25 **Q** And when he's saying this to you, where are you? Where's

1 your body?

2 **A** I'm in the bed, and he grab me in my -- in my -- chin?

3 Chin? (Indicating)

4 **Q** Chin?

5 **A** And knee was in my chest (Indicating). In the bed.

6 **Q** His knee?

7 **A** Yes.

8 **Q** Was on your chest?

9 **A** Yes.

10 **Q** And where was his hand?

11 **A** On my chin, in the bed, he was laying down with me
12 (Indicating).

13 **Q** Do you remember what he said to you?

14 **A** He said, "Look, motherfucker, I can find anything on you,
15 even a gun or pistol," something like that.

16 And I be like, "I don't have nothing. You can search. I
17 don't have nothing."

18 And he say, "Well, it's going to be your word against all
19 these officers'" (Indicating). And --

20 **Q** What did you -- how did you respond to that?

21 **A** They can do anything they want, so I think I'm quiet, I
22 don't say nothing. They start searching everything. And he
23 gave me that number again. And he say, "I expect you call me.
24 I want to come back." And he goes, "Next time I come back, I
25 take you with me."

1 Q "Next time I come back," what did he say?

2 A "You come with me."

3 Q Okay.

4 A "You charged with something."

5 Q And, he gave you a little piece of paper?

6 A Another phone -- yeah, phone number.

7 Q With that same number on it?

8 A I think this was -- I don't remember. But at one point
9 they gave me phone number, same as Mr. (Unintelligible) but the
10 other number was changed, the last number, 43 and the other one
11 was 42, what I remember. Something like that. I don't
12 remember. I don't remember.

13 Q Okay. So, that occasion, the second time Mr. Robles came
14 to your room, was Mr. Furminger with him on that occasion?

15 A I don't remember. No, I don't think so, no.

16 Q Was Mr. Vargas with him on that occasion?

17 A I don't remember. I remember a couple of guys there, I
18 meet later. I don't think so.

19 Q So you remember a couple of guys who were there, because
20 you saw them later?

21 A Yes.

22 Q Okay.

23 A That day was -- everything so fast, and there's a lot of
24 police officers. It's like -- I don't know.

25 Q But you don't remember Mr. Vargas there.

1 **A** No. I don't remember Mr. Vargas there.

2 **Q** So, did they then leave you in your room?

3 **A** Yeah.

4 **Q** Did they leave you in your room?

5 **A** Yes, sir. They leave me in my room. Gave me another --
6 gave me the phone number, and tell me, "I'll -- you call, you
7 call me or I come back for you."

8 **Q** Okay. Now, when they left, did you think, "Maybe I should
9 call Mr. Robles"?

10 **A** I live in the Mission area, and every time that I go -- I
11 live in that area, every time I go somewhere, I meet this guy.
12 I meet Mr. Robles. And that moment, they always with
13 Mr. Vargas. And they told me, like (Whispering), "Call me,
14 call me."

15 **Q** Okay. You need to explain that a little more. You say
16 you live in the same apartment as before.

17 **A** Hotel.

18 **Q** Hotel?

19 **A** Yeah.

20 **Q** On Mission between 16 and 17?

21 **A** Yeah.

22 **Q** Okay.

23 **A** They are every day over there.

24 **Q** And when you say "over there," do you mean in the area?

25 **A** In the area, yes.

1 Q Okay. And after they left the apartment that day, in the
2 days and weeks afterward, would you go outside in the
3 neighborhood?

4 A Yes, I have to. I need to look for money for pay my -- my
5 room. My -- you know.

6 Q And did you see Mr. Robles?

7 A Yeah. In the mornings. Most of the times in the
8 mornings.

9 Q And did you see on those occasions Mr. Vargas with him?

10 A Yes. Most of the time.

11 Q And, did Mr. Robles make some sort of eye contact with
12 you?

13 A Yes.

14 Q And did he make some sort of gesture toward you?

15 A Yeah, "Call me" (Indicating).

16 Q And when you say "Call me," you are doing, like, your
17 fingers by your ears (Indicating)?

18 A Yeah, yes.

19 Q And about -- go ahead.

20 A And I'm -- I'm scared, because I'm illegal, you know, and
21 I have plenty of records, and I don't know what to do. I can't
22 call police because they are police. I don't know what I can
23 do.

24 Q So eventually, did you decide to -- were you concerned
25 about them coming back in your room?

1 **A** Yeah.

2 **Q** Did you do anything to --

3 **A** Every day that I go to store, every day I go out, I come
4 back to the hotel, and I have to search my entire room, make
5 sure there's nothing plant over there, or -- what's -- no good.
6 What, every day I'm thinking, what time they're going to throw
7 away my door (Indicating). I have a scared in that days.

8 So, one day I call him.

9 **Q** So one day you called him. Why did you call him?

10 **A** I think if I call him for -- give him somebody, then he
11 let me alone.

12 **Q** Now, when you say "Maybe I call him and give him
13 somebody..."

14 **A** Yeah.

15 **Q** Explain to the jury what you mean by "call him and give
16 him somebody."

17 **A** Somebody that's dealing drugs. I want to, want to tell
18 him I know somebody, and give that information about him, and
19 he come arrest him. And probably he -- he leave me alone.
20 Because he tell me, "Call somebody." So every time I call
21 somebody the deal is like, okay.

22 **Q** And at that point in time, did you just want to be left
23 alone?

24 **A** Yes. Yes.

25 **Q** Okay. So, eventually you decided to call somebody? Or,

1 to call Mr. Robles about somebody.

2 **A** Yes.

3 **Q** And who did you call him about?

4 **A** I call, one of the guys that I know on the street.

5 **Q** Okay.

6 **A** Because at that time I'm a middleman, and, and he always
7 is in the area, so, I do little, a couple business, you know,
8 for -- so I wanted him go away.

9 **Q** So he was a competitor?

10 **A** Yes. I want him --

11 **Q** Do you know what I mean when I say "competitor"?

12 **A** No, sir.

13 **MR. HEMANN:** Could we ask the translator --

14 **THE INTERPRETER:** (Inaudible)

15 **THE WITNESS:** Oh, yes, compete, yes.

16 **BY MR. HEMANN:**

17 **Q** So you know what I say when I say "competitor"?

18 **A** Yes.

19 **Q** So this guy you were calling Mr. Robles about was a
20 competitor?

21 **A** He was my customer before, and then he find a better
22 connection and go away and start to tell my other friends,
23 "Hey, I know somebody with better price."

24 **Q** You said a couple of minutes ago that you were a
25 middleman. Do you remember that?

1 **A** Yes.

2 **Q** Can you explain what that means in the drug business?

3 **A** Yeah. When somebody call me, like he want to buy an ounce
4 of cocaine and I tell him it's \$700, but I know somebody on
5 sale for 500, so they -- we go with him, they give me the
6 money, we buy.

7 That buyer think it's 700, but the cost is 500 so I make
8 \$200, just the middleman. Just, take it here and give it to
9 him (Indicating). It's that kind of business.

10 **Q** And that's what you are basically doing --

11 **A** Yes.

12 **Q** To support yourself for a job, then.

13 **A** Yes, sir. Yes. I do that with Carlos Guerrero, the guy
14 that I turn in.

15 **Q** This is the guy you were going to turn in.

16 **A** Yes. This is the guy, do that kind of business.

17 **Q** And had you been in Mr. Guerrero's house?

18 **A** Yes, sir.

19 **MR. HEMANN:** Could we please display Exhibit 267,
20 which is in evidence.

21 (Document displayed)

22 **BY MR. HEMANN:**

23 **Q** Is that Mr. Guerrero's house?

24 **A** I believe it was that house, but at that time it was a
25 pink.

1 **MR. HEMANN:** And, Your Honor, this is Tab 1 in the
2 jury's binders.

3 **THE COURT:** Okay. Ladies and gentlemen, you have a
4 picture, Tab 1. You can take a look at it. Or you can look at
5 it on the screen.

6 **THE WITNESS:** At that time it was a pink color.

7 **BY MR. HEMANN:**

8 **Q** At the time that you called Mr. Robles, and that you knew
9 it was Mr. Guerrero's house, it was a pink house, not a yellow
10 house?

11 **A** Not a yellow house. Pink.

12 **Q** But this is the house (Indicating)?

13 **A** Yes. I think it is.

14 **Q** Okay. Had you been in Mr. Guerrero's house before?

15 **A** Yes. A lot of times.

16 **Q** And on what occasion had you been -- what occasions had
17 you been in his house?

18 **A** I use him for -- what is the reason to go to his house?

19 **Q** Yes. What's the reason?

20 **A** Okay. The friends in Redwood City --

21 (Reporter interruption)

22 **THE COURT:** Speak slowly.

23 **THE WITNESS:** My friends in Redwood City, they buy a
24 kilo, cocaine. Guerrero buy, like, four or five ounces. But
25 it's good stuff. They come from the brick. So, I teaching him

1 how cut it. Make more.

2 **BY MR. HEMANN:**

3 **Q** You were teaching Mr. Guerrero how to cut it up to make
4 more cocaine?

5 **A** Yes. And I go to his house, or we -- four ounce, we make
6 five ounce. And I make more money.

7 **Q** So, at around the time that you called Mr. Robles for the
8 first time, --

9 **A** I --

10 **Q** -- had you recently been in --

11 **A** One night before.

12 **Q** Let me finish the whole question, okay?

13 **A** Okay.

14 **Q** Had you recently been in Mr. Guerrero's house?

15 **A** Yes, sir.

16 **Q** When?

17 **A** Night before.

18 **Q** Okay. So, you called Mr. Robles. Did you call
19 Mr. Vargas?

20 **A** No.

21 **Q** Did you call Mr. Furminger?

22 **A** No.

23 **Q** All right. You called Mr. Robles.

24 **A** I called Mr. Robles.

25 **Q** And what did you tell Mr. Robles?

1 **A** I tell Mr. Robles: okay, we going make one, one deal. And
2 I'm free, and he let me alone?

3 He says, "Yeah, yeah, good. Just give me somebody, and
4 it's okay." So, he say, "Come to the police station." And, I
5 go to the police station, and we talking about him.

6 **Q** When you went to the police station, did you go back in
7 that same little room that you just described?

8 **A** Yes, same little room.

9 **Q** Who was in that room when you went in there? Do you
10 remember?

11 **A** Mr. Robles, and -- I talk to him first and then he call
12 another, another officers, plainclothes.

13 **Q** So you talked to him alone, first?

14 **A** Yeah, the first thing, yeah.

15 **Q** What did you tell him about Mr. Guerrero and
16 Mr. Guerrero's house?

17 **A** I tell them I know somebody, they have crystal meth, they
18 have marijuana and cocaine.

19 **Q** Did you tell them what other things Mr. Guerrero had in
20 his house?

21 **A** I tell him he have money and gold, like, things. You
22 know, like -- but, at that moment I don't know him. So I
23 thought he looking for drugs. We talking about more drugs.

24 **Q** When you say "I don't know him," who's "him"?

25 **A** Mr. Robles.

1 Q So, you don't know him well at that point.

2 A No.

3 Q So, you were just telling him about drugs.

4 A Yeah.

5 Q Okay. So you told him about the drugs. Did you describe
6 the inside of the house to him?

7 A I write him a map.

8 Q You drew a map?

9 A Yeah. Drew a map.

10 Q And did you show him where Mr. Guerrero's room was in that
11 house?

12 A Yes, yes.

13 Q Okay.

14 A And I make a call. I call him and say, "What are you
15 doing?"

16 And he say, "I'm sleeping."

17 I say, "Okay, call me when you wake up."

18 Q Okay. So, we just need to be careful. You made a call.
19 And who did you call?

20 A Carlos. I call him "*El Pareja*."

21 Q You called him "*El Pareja*"?

22 A *Pareja*, yeah.

23 Q Did Mr. Robles ask you to make that phone call?

24 A Yes, make sure he's over there.

25 Q You're calling from your phone?

1 **A** I think so, yes. I have to, yes, my phone.

2 **Q** And what do you say to Mr. Guerrero?

3 **A** "What are you doing?"

4 He say, "I'm sleeping."

5 So I tell him, "Hey, when you wake up, give me a call."

6 He say, "Okay."

7 **Q** Okay.

8 **A** But, before that, we drive around the house (Indicating).

9 **Q** Who's "we"?

10 **A** Me and Mr. Robles.

11 **Q** All right. You drove over to this house on 22nd and --

12 **A** Yeah, and somebody else, but I don't remember who else.

13 **Q** Another police officer?

14 **A** Yes. I was in the back.

15 **Q** And, did you identify the house for Mr. Robles?

16 **A** Yes. I'm -- point the house (Indicating).

17 **Q** At some point, then, did you leave Mr. Robles's company?

18 **A** Yeah. They -- they tell me walk away somewhere, I don't

19 remember. Van Ness, or I don't know -- one -- couple blocks

20 from the house, they tell me.

21 **Q** They dropped you off.

22 **A** Yes.

23 (Reporter interruption)

24 **MR. HEMANN:** Van Ness.

25

1 **BY MR. HEMANN:**

2 **Q** After they dropped you off, did you --

3 **A** I think we do a buy. I really don't remember if I make
4 call only or ask for something. I don't remember.

5 **Q** Okay. Did you go over to the area of the house with
6 Mr. Robles?

7 **A** Yeah. I point to him the house.

8 **Q** Okay. And then after that, did they drop you off?

9 **A** Yes.

10 **Q** Okay. After they dropped you off that day, did you hear,
11 after that, anything more from Mr. Robles about Mr. Guerrero
12 and his house?

13 **A** A few hours later -- I don't remember if I call him or he
14 call me to see what happened. And, he was like, very good,
15 "Can I talk to you? Can I see you?"

16 And I say, "Yes."

17 **Q** Where were you when you had this --

18 **A** In the Mission. I don't remember. Maybe, probably the
19 20th and Mission, because he asked me where I am. And he told
20 me if I can meet with him. I say "Okay."

21 I see him in the little alley between Valencia and
22 Mission.

23 **Q** Okay. Did you arrange to meet with him there?

24 **A** Yes. I want to talk to him, and tell if everything is
25 already, if I'm good, I can go, and everything's like --

1 Q What time of day was this?

2 A What time?

3 Q Morning, afternoon, evening.

4 A Afternoon, 2:00 or 3:00. I don't remember. Afternoon.

5 Q Afternoon.

6 A Yeah, I don't remember what time, sir. Five years ago,
7 more than that.

8 Q Okay. Did you then meet up with him or arrange a place to
9 meet?

10 A Yes.

11 Q Okay. Where was that?

12 A I believe it was in between 19 and 20 and San Carlos, I
13 think. One of the alleys over there.

14 Q Who got there first?

15 A Me.

16 Q Where did you go when you got there?

17 A Because I'm around the corner. So, when he come, he come
18 in the blue car. He was in the passenger, and the other police
19 officer drive (Indicating). The same police -- I think it was
20 the same police that come with him the first time to my room.

21 Q Okay.

22 A So, he gone from the car.

23 Q And where were you sitting?

24 A It's, like, the Pareja house, the steps, I sit on the
25 steps but another house, another house.

1 Q So there's another house near the station with long steps.

2 A Yeah. I sit on the last one. First I be standing up in
3 the sidewalk. When I see they come, I walking there. So
4 Mr. Robles jump from the car and walk to me.

5 Q Did the car stay there at the bottom, or keep going?

6 A It keep going a little bit. I don't know. They stick --
7 I can't see.

8 Q And Mr. Robles came up the stairs to sit with you?

9 A Yeah, he walked to me.

10 Q Okay. And, did he sit down next to you?

11 A Yes.

12 Q Okay. And what did he tell you?

13 A I don't know. He put the hand in my back like he know me,
14 he was my friend, like, "Yeah, dude, very good" (Indicating),
15 that kind of thing (Indicating thumbs up).

16 Q Can you describe what his mood was like?

17 A Like he was my friend. Like when you see your friend,
18 like, "How you doing, brother?" You have a game and you guys
19 win, "Very good, we do good," and that kind of stuff.

20 And --

21 Q And then what did he say?

22 A I don't know. He say he -- he got good case, everything
23 is good. We had to do this more, and all that kind of stuff.

24 And I say, "No, I don't want to do -- what I make or what
25 I'm going to make with this," like, like -- I want to explain

1 to him that I do that because I wanted he to go away.

2 So in one moment he pulled out money (Indicating), out of
3 his pocket. A big double, like folded money (Indicating).

4 **Q** Like a roll of money?

5 **A** Yeah.

6 **Q** Okay. And how big, would you say?

7 **A** Like this (Indicating).

8 **Q** Okay.

9 **A** Was five, ten, twenties, yes.

10 **Q** Okay.

11 **A** That kind of money, had that before. Like that. Most of
12 the dope dealers don't use a wallet. They use a roll.

13 **Q** They use what?

14 **A** A roll.

15 **Q** A roll of money?

16 **A** Yeah.

17 **Q** And what were the denominations?

18 **A** Twenties, tens. I see -- at that time I'm thinking, and
19 I'm still thinking it was Carlos' money.

20 **Q** Okay?

21 **A** Because I see that money. He always dealing, he dealing
22 20's, he deal in eight balls, he deal in crack, deal in weed.
23 He's selling all day. All day, money, money, money.

24 **Q** Okay. So, Mr. Robles pulled out a roll of money. What
25 did he do with it?

1 **A** Yeah, because I tell him, he say, "We have to do this one
2 more time, another thing."

3 And I say, "No, I don't want to do that, I'm..."

4 And, and he, "Yeah, yeah, you have to call, we can make
5 money, this." And he gave me -- I think, a hundred dollars.

6 **Q** Okay.

7 **A** Hundred dollars. So I grabbed that hundred dollars. In
8 that moment, I'm happy, more comfortable. You know, I talking
9 more to him, he give me money. At the time, I'm -- I don't
10 have that stress no more (Indicating).

11 So I tell him, "Look how much you give me, and look how
12 much you make."

13 And he, like, "Oh, you bastard motherfucker..." Sorry.
14 Can I -- sorry.

15 **Q** If it was -- if it was --

16 **A** I'm sorry.

17 **Q** If it was said, if those words were said at the time, you
18 can say it.

19 **A** Yeah.

20 **Q** I don't want you just saying it for no reason. Okay?

21 So, is that what he said at the time?

22 **A** Yes. When he come to the hotel, he said very worse.

23 **Q** When he came to your hotel, he said worse?

24 **A** Yeah. I mean, bad words, I mean a lot.

25 **Q** But on this occasion, when you said, "Wait a minute, can I

1 have some more," what did he say?

2 **A** No, I don't say "Can I have more."

3 **Q** What did you say?

4 **A** I tell him, "Look (Unintelligible) and look what you
5 have."

6 And he like, "Oh, you bastard motherfucker." He gave me,
7 I guess, 100 more or 150 more.

8 **Q** Okay.

9 **A** I walk away with 250. I count the money.

10 **Q** So when you walked away from him later on, you had \$250?

11 **A** Yes (Indicating).

12 **Q** You kind of like flipped your -- did he kind of flip the
13 money to you like that (Indicating)?

14 **A** Yes, I -- I was seated right here, and he was standing up
15 right here (Indicating).

16 **Q** Okay.

17 **A** He gave me the money. At one point I stand up. And when
18 I stand up he have -- like, something like this (Indicating),
19 like this paper was the paper, drop in my -- (Indicating).

20 **Q** Okay. So, stop for a minute.

21 Okay. After he gave you the money and it was time to
22 leave, you both stand up?

23 **A** He already stand up.

24 **Q** Okay.

25 **A** All the time.

1 Q And then you stand up?

2 A Yes.

3 Q And what were you wearing?

4 A I wearing a jacket, with a big bag in the front
5 (Indicating).

6 Q Like a pocket?

7 A Yes.

8 Q A big one?

9 A Not a big jacket, like that jacket (Indicating), but with
10 a thing in the front (Indicating).

11 Q Okay. And when you stand up, what did he do?

12 A He put something in there.

13 Q What did he put in?

14 A He don't tell me nothing. He just put in the -- I don't
15 ask him.

16 Q What did it look like?

17 A Like this (Indicating).

18 Q Okay.

19 MR. HEMANN: So, the witness is holding up a crumpled
20 napkin.

21 THE WITNESS: Paper. So then, he walking to the car.

22 BY MR. HEMANN:

23 Q And how did you leave it with him?

24 A I think that the other officer go back. And he jump in
25 the car. So I wait for they leave, so then I'm start walking.

1 The same direction. We are -- that way (Indicating).

2 Q Toward what street?

3 A Like 21 to 20. I start walking that way. So I put the
4 thing, open it, and it was like glass. You know when you broke
5 a glass (Indicating), look like that. And then I find out it's
6 crystal meth.

7 Q How did you know it was crystal meth?

8 A I know it's crystal meth.

9 Q How do you know it's crystal meth?

10 A How I know? Just -- hard to explain. I know it's crystal
11 meth.

12 Q You are a drug dealer, right?

13 A Yes, I'm a drug dealer. I know.

14 Q Okay.

15 A You can put baby powder here and you can put cocaine here,
16 and I don't have to try (Indicating). I see in that, okay,
17 that's cocaine, and that's powder.

18 Q Okay.

19 A Baby powder. So I know, it was crystal.

20 Q You knew this was crystal meth.

21 A Yes, sir.

22 Q What did you do when you found -- how big was the piece,
23 by the way?

24 A Like this (Indicating).

25 Q Maybe two inches?

1 **A** Yeah. They come -- you know when you broke a glass they
2 come in piece -- they come in piece like that.

3 **Q** So it looked like a piece of glass about two inches long?

4 **A** Yes. And then another one, a little bit, yeah.

5 **Q** So what did you think when you found a -- crystal meth?

6 **A** I thought, when's the police going to come at that moment
7 and arrest me? And I think this is the time that they put
8 something on me.

9 **Q** You thought it was a setup?

10 **A** Yeah, I want to throw it away, but -- he talked too nice
11 to me so I'm be like -- I don't know, you know, I'm a
12 businessman so I'm -- I had that. And what I do is walk it
13 straight to the 16 and Mission and start dealing with that.

14 **Q** When you say you start dealing with it, you mean you sold
15 it?

16 **A** Yeah.

17 **Q** Do you remember who you sold it to?

18 **A** The first time -- I almost sell everything -- let me find
19 out what -- a man, look like a woman.

20 **Q** Okay.

21 **A** With the -- everything, yeah. He -- he almost buy
22 everything to me.

23 **Q** And did you sell it to a few other people as well?

24 **A** Yeah. I sell to one guy, 19th. A couple guys, very fast.

25 **Q** How much money do you think you made off the crystal meth

1 that you sold?

2 **A** I think I had to make more, but I don't put on the scales,
3 I just -- I see somebody, and I offer it. And if they say yes
4 I just cut it from that (Indicating), and give it to him.

5 I make like, maybe 200. Or 150. I don't remember; hard
6 to say. But I can make more if I put it on the scale, because
7 that sale is expensive.

8 (Reporter interruption)

9 **BY MR. HEMANN:**

10 **Q** What year was this, Mr. Hernandez?

11 **A** Oh, like 2009, I think.

12 **Q** When did you first become involved in being a drug dealer?
13 When did you first become involved with illegal drugs?

14 **A** Dealing with drugs? Oh, my God. This is --

15 **Q** How old were you?

16 **A** In the eighties, I had, like eight years old, nine years
17 old.

18 **Q** And where were you born?

19 **A** Mexico.

20 **Q** Where were you born?

21 **A** Michoacán, Mexico.

22 **Q** And were you an eight-year-old in Mexico when you first
23 started with illegal drugs?

24 **A** Marijuana.

25 **Q** And what kind of things did you do with marijuana?

1 **A** When I'm born, I'm born in Michoacán.

2 **Q** You need to say that -- that's the city that you were born
3 in?

4 **A** Yes. Apatzingan.

5 **Q** Can you spell that for the court reporter?

6 **A** Can I read --

7 **THE INTERPRETER:** I'll put it in a note and write it
8 down.

9 **MR. HEMANN:** Okay.

10 **THE WITNESS:** I have to wait?

11 **BY MR. HEMANN:**

12 **Q** No. Go ahead.

13 **A** And --

14 **Q** So, you're eight years old?

15 **A** Yeah. My father go to jail at that time for -- he
16 transportation drugs from Michoacán to Reynosa, Texas. One of
17 the times he had (Unintelligible) in the road, so he go to
18 jail. So we are very poor.

19 My mother was close from somebody else to give us food.
20 And, you know, when you put iron, I don't know how they calling
21 that, they do that. Yeah, they washing and -- and do that
22 (Indicating) for give it to us, food.

23 But, we had six kids, my mama. And, she don't have no
24 money. So, she don't have time to put attention on us, so I go
25 to the streets when I'm like six years old. I be everywhere.

1 And I start hanging out with the -- I don't have no school. I
2 start hanging out with adults.

3 **Q** Uh-huh.

4 **A** So, I don't remember how this come out, but one day they
5 told me if I want to go to process, when they harvest, when
6 they harvest the marijuana, they bring it to the lemon factory.
7 And they start make the -- the bricks.

8 One of my jobs to put the tape, we tape it (Indicating),
9 tape, tape, tape. But, I was talking about like 500 bricks, a
10 lot. (Indicating). They have everything right here
11 (Indicating). So they start make the bricks and my job is to
12 tape it, tape it, give it to somebody else. Somebody else put
13 it, something.

14 At that time the peoples thinking if they use a grease,
15 dirty grease, that dogs can't smell that. I don't know, but
16 somebody put grease. Sometimes I did, and then somebody else.

17 **Q** So that was marijuana.

18 **A** We killed the thing, yeah. I was like eight years old.

19 (Reporter interruption)

20 **THE WITNESS:** You know, the big truck, the cement,
21 the head, the head and then they put the box (Indicating), they
22 put for -- that kind of grease.

23 **BY MR. HEMANN:**

24 **Q** Engine grease.

25 **A** Yeah. Dirty grease. And coffee.

1 Q What's that?

2 A And we mix it with coffee.

3 Q So, that was when first started working with marijuana?

4 A Yeah.

5 Q And then did you start working other illegal drugs?

6 A Yes, then I like -- that was not my job. I do sometimes.
7 Because I don't know how to tell my mama I have the money. How
8 come I -- "Look, Mama, I find this bill on the street." And
9 she don't believe me and she think stole it, I don't know what
10 she thinking. But --

11 Q Slow down.

12 A Okay. So, it's hard to me, give it to my mama, money.

13 Q Okay.

14 A And, so I don't do that. I have a lot of -- I have eight
15 years old, so whatever money they gave me, I thought it's a
16 lot. I buy everything, a lot of things. I put it in a hole
17 back at my house.

18 Q Buried it in the backyard?

19 A Yeah. And, and, and I spent anything (Indicating), but
20 it's hard to me, buy things, my mama.

21 Q Okay. So you know some marijuana dealers, right?

22 A Yes.

23 Q Did you also meet some cocaine dealers?

24 A After that, one time that I working with somebody he told
25 me it's better money, I can make -- because when you do that

1 marijuana, it's very hard job. It's good money, but you have
2 to work. You have to work. I have a lot of pokes in my
3 fingers, and it's tiring.

4 So one of the guy told me it's a better way to make money,
5 and I can make money in a couple of hours. And, but that was
6 for cocaine.

7 **Q** Okay. What was your job with cocaine?

8 **A** They -- I talked to somebody. I don't remember the names.
9 One person.

10 I meet with somebody and they told me how that thing, we
11 had to go in the middle of the night to outside the city. And,
12 we go to the little hill, and wait. Sometimes we wait one
13 hour, sometimes we wait two hours, sometimes they don't come.
14 Airplanes come in (Indicating), you don't see nothing, you only
15 heard the name -- the motor.

16 At one point they turned the lights, light (Indicating),
17 and whatever, whenever they go down, and they go up
18 (Indicating), they say "Ready," so we have to form the line
19 because they dropping the cocaine. So we had to go and we make
20 money. Each, each brick that we find it, we make money.

21 **Q** So, you and some other kids?

22 **A** Uh, I think I was the only kid. There was another kid,
23 but more of the guys, you know, like 18, 20. I was down, the
24 little one (Indicating). I grew up -- yeah, there was a lot of
25 other kids, like 12, yes.

1 Q So you go out and find the cocaine, and then bring it back
2 to the dealers?

3 A Yeah. We put one thing right here (Indicating), to, like
4 a little bag.

5 Q Like a bag strapped on your head?

6 A Yes. And go to the back, so we go looking for the thing,
7 and then we put it back (Indicating). But it was like 80
8 kilos, 60 kilos, but we are like 12, 13 people, so I find like
9 two or three.

10 The better is the last one, because when it's left like
11 four kilos, they double the offer. Whatever they pay you. If
12 they pay \$200 for find one kilo, they double, "Okay, \$500. We
13 still missing four."

14 Q You have to go look harder.

15 A Yeah, because --

16 MS. CAFFESE: Excuse me, but I think at this point we
17 get the idea. I'm going to object to a narrative.

18 THE COURT: Sustained.

19 MS. CAFFESE: Thank you.

20 BY MR. HEMANN:

21 Q At some point in time, did you also become involved in
22 heroin?

23 A Yes.

24 Q And were you working for a heroin dealer as a child in
25 Mexico?

1 **A** No, they bring me here. I do sometimes over there, but he
2 going to next state, Guerrero, like a couple -- I go to
3 Guerrero, Acapulco, we go. Another town. And he buy, and we
4 bring into Michoacán.

5 **Q** So, at some point, did you come into the United States?

6 **A** Yes.

7 **Q** And, briefly, how did you get into the United States?

8 **A** I have -- because I have only adult friends (Indicating),
9 so I had this, this friend mine, that he came to the United
10 States. At that time I don't know where he come. And he told
11 me I go with my brother -- his brother, he dealing in heroin
12 here in the United States.

13 **Q** Okay.

14 **A** He's selling grams. And he told me he going to here, and
15 I tell him, "Okay, tell your brother I want to go." I was
16 probably 13 years old.

17 **Q** So, about -- when you were about 13 years old, you --

18 **A** Yeah, 12 years old. I tell him, "Tell your brother I want
19 to go and sell it."

20 And he like, "Okay, I tell him."

21 So he come here. And in a few months, three months, two
22 months, I don't remember, that his mother come to my house, and
23 tell my mother that guy want to talk to me.

24 **Q** Okay. So, after you met this guy, did this guy arrange
25 for you to come to the United States?

1 **A** Yeah. I talk to this guy -- he say, "My brother tell me
2 you want to come to -- you know what are we doing?"

3 I say, "Yeah, I know what you do."

4 **Q** Stop for a minute.

5 And what did they do? Heroin dealers?

6 **A** Yes.

7 **Q** So did you come to United States to work with heroin
8 dealers?

9 **A** Yes.

10 **Q** And did you eventually make your way to San Francisco with
11 these heroin dealers?

12 **A** Yes.

13 **Q** And did you become employed by these heroin dealers in
14 San Francisco?

15 **A** Yeah, he -- he was mad, because I -- I don't tell him how
16 I --

17 **Q** You didn't tell him how old you were?

18 **A** No.

19 **Q** How old were you?

20 **A** Like, 13.

21 **Q** Okay. And, but did he get over being mad, and put you to
22 work?

23 **A** Yeah, he -- yeah, he -- he find me a way because I can't
24 live in the streets. So that my first job was answer the
25 phone.

1 Q You said you can't be on the streets; too young?

2 A Yeah, too young.

3 Q So he put you to work in San Francisco?

4 A Yes.

5 Q As -- doing what?

6 A Between 19 and 20 and -- that was my first house, when the
7 peoples call, they give me -- I don't know no English at that
8 time, zero. So they write for me, three words: "Who is it,"
9 "What do you want," and "Where are you?"

10 (Reporter interruption)

11 THE WITNESS: Yeah. And then he when he told me who
12 is this, they give me the name, and I write the name on the
13 paper.

14 BY MR. HEMANN:

15 Q Like a code.

16 A Yes. And then I say, once they give me their name, "What
17 do you want," and then, okay.

18 (Reporter interruption)

19 BY MR. HEMANN:

20 Q So, then, you're working for this guy. How long did you
21 work for him?

22 A We do that for maybe three years.

23 Q Okay. At some point in time, did you get arrested?

24 A Yes.

25 Q And how did you come to be arrested? Was that the first

1 time you have been arrested?

2 **A** Yes.

3 **Q** Okay.

4 **A** I can't go outside because my -- my only job was that, on
5 the phone. And make a lot -- they sell a lot of heroin. They
6 sell quarter grams, grams and halves.

7 So one of my job, they put it in the plastic, and then put
8 inside the balloon. But I talk about 200 every day, that was
9 my job. Do that, do that, put it in the fire, make the
10 balloon. Make a lot of money.

11 **Q** So, how did you come to be arrested?

12 **A** One day, the guys are working outside, they go to --
13 drinking. So they come drunk one night, like 2:00, 3:00 in the
14 morning. And I was a young guy. I be addicted, like any kid,
15 to play games.

16 **Q** Video games?

17 **A** Nintendo. And then, new game, killing ducks, quack,
18 quack, you kill duck with a pistol (Indicating). I want that
19 so bad. So these guys told me, was 3:00 in the morning, the
20 guy told me, I come here, say somebody want two grams or three
21 grams, something like that, and he say, "You know what? I feel
22 very bad. You go see him." My first sale. He tell me "You go
23 see him, I'll take you to the mall to buy the game."

24 I say, "Okay." So I go see the guy, and these guys were
25 the officers. And --

1 Q So you got busted.

2 A Yes.

3 Q Did you get sent to Juvenile Hall?

4 A They sent me to 850 Bryant. And I told the Judge, I have
5 20 years. Because I feel like an adult. So he said, "How old
6 are you?"

7 And I said, "Twenty."

8 And he say, "You are not 20." So they have sent me to
9 juvie, yeah.

10 Q So how long were you in the juvenile facilities, both
11 Juvenile Hall here and then the camp facility? How long?

12 A Total?

13 Q Total.

14 A Like 11 months, 12 months.

15 Q When you got out --

16 A I go to -- they send me to transition house.

17 Q Transition house?

18 A Fourteenth and Guerrero.

19 Q What did you do when you got to the transition house?

20 A I run from them. I'm free, so I walk away.

21 Q Did you go back to being a drug dealer?

22 A Yes.

23 (Reporter interruption)

24 BY MR. HEMANN:

25 Q Did you go back to the same guy?

1 **A** Yes.

2 **Q** Okay.

3 **A** He live one block away.

4 **Q** Okay.

5 **A** From the transition house.

6 **Q** And did you continue then selling drugs?

7 **A** In that moment, was very easy for me. They opened my eyes
8 in the juvie. They -- I mean, my English was better. I feel
9 comfortable, what I do. So, at that moment, I start make deals
10 on the street.

11 **Q** So you went in kind of a mediocre drug dealer, and you
12 came out a good drug dealer.

13 **A** Yes. I can talk to the adults, the junkies. I can talk
14 to everybody. I don't know --

15 **Q** Slow down.

16 **A** I'm better. They open my mind. You know, when I come
17 here I always in the room, play games. When I go to juvie, I
18 meet all the kind of people, so --

19 **Q** After you got out of juvie, did you continue selling
20 heroin?

21 **A** Heroin.

22 **Q** In the Mission?

23 **A** Yes, sir.

24 **Q** Okay. And did you do that until you got arrested again?

25 **A** My boss got arrested. Yes, yes. But, before I have

1 arrest, I changed boss. He went to jail. Federal prison.

2 Q So you changed to a different boss?

3 A Yes. And this is a bigger boss. Now he bring the heroin
4 for me. My first boss, he buy it here. He buy like five
5 pieces. But my new boss, he bring the thing from Mexico to
6 here.

7 Q Okay. And so you worked for two bosses. And then, did
8 you get arrested again?

9 A Yes. And I go to prison.

10 Q And that time, you went to prison.

11 A Yes, sir.

12 Q And you went to prison for selling what kind of drug?

13 A Heroin.

14 Q And what prison did you go to?

15 A San Quentin.

16 Q And how much time did you do in San Quentin?

17 A I go for my number -- they give you a number, so, when you
18 go to San Quentin, like the reception out there, you come over
19 there, they give you a number, and then they sent you to
20 another prison to do your time, or you stay there. It depends.

21 But I go only for my -- for my -- for my number. Because
22 I already spent like 12 months in 850 Bryant, talking about
23 that case. So, when they send -- when they give me the --
24 sentence, when the Judge told me I got to do two years, they
25 count the time I already do in the county. So I go for four

1 months, four or five -- I don't remember, four months, I think.

2 **Q** When you got out of San Quentin, do you remember what year
3 that was?

4 **A** When I came from San Quentin?

5 **Q** Uh-huh.

6 **A** I went to my wife house and my daughter. When I go to
7 jail she had three months pregnant, like three or four months.

8 **Q** What year did you get out of San Quentin?

9 **A** I believe it was '99, sir.

10 **Q** After you got out of San Quentin, did you go back to
11 selling drugs on the street in the Mission?

12 **A** When I came home from San Quentin I have one friend, at
13 that time he is big guy in Fresno, but he dealing with crystal
14 meth. And he told me if I want to do that, you know. I don't
15 want to deal in crystal meth. So he recommend somebody else.

16 **Q** So did you go to work for somebody selling drugs?

17 **A** Yes.

18 **Q** What kind of drugs?

19 **A** Cocaine and heroin.

20 **Q** And is this the first time you start dealing with cocaine?

21 **A** Yeah. It was the first time.

22 **Q** Now, over the next several years after that, did you start
23 dealing in larger amounts of cocaine?

24 (Reporter interruption)

25

1 **BY MR. HEMANN:**

2 **Q** After the next several years, in the next several years
3 after that, did you start dealing in larger amounts of cocaine?

4 **A** Yeah, one-kilo operation, like one month later, one month
5 or two months.

6 **Q** And what amounts -- what sizes of cocaine did you begin to
7 deal with, sort of, between 1999 and 2002? How did it grow
8 over that --

9 **A** How many kilos did I sell? Oh, a lot.

10 **Q** Okay. Hundreds?

11 **A** Hundreds. Yeah, my boss bring me, like, three kilos every
12 week, four kilos every week. So put four years together -- and
13 heroin.

14 **Q** And did you start making a lot of money?

15 **A** We start make a lot of money.

16 **Q** And did you start using cocaine?

17 **A** Yes.

18 **Q** Did you start using a lot of cocaine?

19 **A** In 2002.

20 **Q** Okay. Tell the jury, did you become addicted to cocaine?

21 **A** Well, the thing is we make -- at that point, I don't -- I
22 don't work it. I have three guys work for me.

23 So, what -- what I do is only, one of my job is go to the
24 bars and meet people, offer this, "This is my -- this is my
25 stuff (Indicating), you want to call me, this is my price."

1 Bring new customers.

2 So, but, was a lot of -- a lot of money. So it's party
3 for me every day. Every day. Every day.

4 Q It was a party for you every day?

5 A Yeah. Drinking every day, have a party. Do whatever I
6 want. You know, make a lot of money. So, sometimes you
7 looking for more. And, I had the stuff (Indicating). So I be
8 tired, I use it.

9 Q So when you started using it, did you start using it too
10 much?

11 A Yeah, that thing beat me. Because I had the kilos with
12 me, so, what I do, I try to be a little -- impress my friends
13 or whatever. And we have a party at my house, I bring a kilo
14 and I put it over there, I make a B, open it, and "Okay, let's
15 go." And then I'm continuing (Indicating), from the kilo.

16 At one point, I'm -- just put my fingers inside, and smash
17 it in my nose (Indicating). And that thing beat me.

18 Q Beat you?

19 A Yeah, beat me. So my boss start like, my boss, he only
20 move like 80, 60 kilos. But he work for somebody. Plus he
21 have a lot of friends, that move a lot of things. And he like
22 me.

23 Everywhere he go, I go with him. So I know a lot of
24 people. People don't like that. That I be like --

25 Q So the bosses didn't like that you were using all this

1 cocaine?

2 **A** Well, thing is when I use cocaine I do cocaine for maybe
3 three days in the room, I turn my phones off, I don't answer
4 the door. I disappear because I -- I deal in drugs already.

5 And my bosses, they stop the business, they say, "Oh,
6 Cesar go to jail. What happened with him?" They don't know
7 what happened. So they stop, from -- from Santa Ana,
8 California to here or wherever, they work everywhere, they stop
9 because they don't know what happened with me.

10 **Q** So the whole system stopped when you --

11 **A** Yeah.

12 **Q** So, did you get fired, basically?

13 **A** Yeah. They kicked me out.

14 **Q** And did you move to another place?

15 **A** Yeah, because I don't make no money here. And yeah, I
16 move to Atlanta.

17 **Q** Atlanta?

18 **A** Yes.

19 **Q** And did you get a job in Atlanta?

20 **A** Yeah. I work in the movie theater and I work in -- Stevi
21 B's Pizza Buffet.

22 **Q** That's a buffet. That's the name of the place?

23 **A** Yeah, Stevi B. And I cleaned the movie theater. I start
24 at 11:00 that night until 6:00, and then I work pizzas, I
25 think, 9:00 to 2:00.

1 Q Did you also get a job for a drug dealer?

2 A One day I -- one day I go to the place from my country,
3 food from my state, from my -- lamb, we call it *birra de chivo*,
4 stewed lamb. And when I come out from there I find one of the
5 guys. This guy is a brother to the guy they recommend to me
6 with my third boss. I know him from here. And from Michoacán.

7 Q Was he a crystal meth dealer?

8 A Yes. I see, he told me, "What are you doing here? You
9 know, blah, blah, blah," and we start talking. And then he
10 told me they living in Seattle, Washington, but they bring
11 crystal meth.

12 Q And did you get a job guarding crystal meth for this guy?

13 A I have my wife pregnant, and she told -- I mean my
14 girlfriend pregnant over there. And she (sic) told me, "Hey,
15 dude, look. We have to come back but we have a lot of pounds
16 of crystal meth in that trailer. Do you want to move over
17 there? You don't pay rent, you don't pay bills, and just watch
18 it."

19 Okay, so I be like --

20 Q So he gave you free rent to watch the crystal meth?

21 A Yeah, but working --

22 (Reporter interruption)

23 **THE WITNESS:** But I'm working when I'm over there.
24 My girlfriend worked with me at the pizza place.

25 Q Basically that was just for -- you were protecting his

1 crystal meth in exchange for free rent?

2 **A** Something like that.

3 **Q** At some point in time did you move back to San Francisco?

4 **A** I moved to Gatlinburg, and then Kansas -- Memphis, and
5 then moved to Kansas. And one day my boss called me. Rafael.

6 **Q** Boss from San Francisco?

7 **A** Yeah.

8 **Q** Mr. Valencia.

9 **A** Yeah. And he told me what I do, and everything, and I say
10 I'm working. I work in construction at that time. Framing.

11 **Q** Construction?

12 **A** Yeah we build houses in Kansas. And, he say, "So, you
13 clean?" And I clean at that time.

14 **Q** He asked you if you're clean.

15 **A** Yes.

16 **Q** Meaning no more coke.

17 **A** Probably, yes, but no, like, before, like three or four
18 days, no, like.

19 **Q** Okay. And did he ask you if you would come back to
20 San Francisco?

21 **A** He tell another Cuban, and the Cuban send me money to come
22 here.

23 **Q** And did you come back to San Francisco and go back to work
24 for Mr. Valencia?

25 **A** Yes.

1 Q And did he want you to start dealing cocaine again?

2 A Yes.

3 Q How long did that last?

4 A We do, like, like, four deals. And then, I did again.

5 Q You started using too much again?

6 A No. Just one time. But the guy, the guy when I was that
7 day, he jealous of me. So he told me -- the phone is ringing.
8 He asks me, "Why don't you answer the phone?"

9 I say, "Because it's my boss, and he want to meet me, and
10 I'm high right now. I don't want to meet him."

11 And then I went to the bathroom, and the boss called
12 again, and he answered: "Oh, he's in the bathroom, doing
13 cocaine."

14 Then he -- "Look, motherfucker, I hear you high right now.
15 I want to meet you at the house right now." Because he pay my
16 rent, he buy my car.

17 So next day, I owe him \$5,000 and he say, "Forget about
18 the \$5,000, keep it. But I don't want to make deals no more
19 with you."

20 Q Okay. So you stopped being a cocaine dealer for
21 Mr. Valencia?

22 A Yeah, 2007.

23 Q Is that when you became a middleman again?

24 A Yeah, because they tell the other guys like me, "Don't
25 give nothing to Cesar. Only, he come with the customer, sell

1 to him."

2 **Q** So you weren't trusted to hold large amounts of drugs
3 anymore.

4 **A** No. He say he don't trust me even if I want to buy an
5 ounce with cash in the hand. I have to have somebody with me.
6 My boss, he -- he act like he like me, he's my family, like he
7 tried to protect me from myself.

8 **Q** So after you became a middleman again -- what year was
9 that, 2007, 2008?

10 **A** Yeah, 2007.

11 **Q** Okay. Did you do that for a while?

12 **A** Yeah, until I find the guys (Indicating). 2008.

13 **Q** You said until you find these guys, and you gestured
14 towards Mr. Robles.

15 **A** Yes. I'm going to stop a little bit, when they let me go,
16 I start working in a restaurant, Porticos over there, Beale and
17 Second -- Beale and Market.

18 **Q** We'll get to that in a minute.

19 **A** Okay.

20 **Q** So where were you living in 2007, 2008?

21 **A** I living in the -- Third Street.

22 **Q** Third Street?

23 **A** Third Street and Bayshore, somewhere over there.

24 **Q** In a motel?

25 **A** A room. Somebody rent me a room over there.

1 Q Okay. And how did you eventually end up in that little
2 hotel on Mission Street between --

3 A I work in the -- in the -- in the Porticos restaurant, so
4 I move to between 16 and 17 and Mission. It's a little
5 building, apartments. They have rooms at the top, on the
6 second floor, they rent rooms (Indicating).

7 So I know somebody that -- somebody that was janitor in my
8 job, he's a janitor in the building. He told me, "Do you want
9 to move in with me?"

10 And I say, "Yeah, I want to move with you." So I move
11 with him over there.

12 When I go to Sixth and Mission I see a couple of business
13 to do so -- um, I move over there. And then I move to the
14 hotel room, because the guy that rent my room, he fight with
15 another guy. So they kick him -- they say, "You have to
16 leave." Both, two.

17 Q So you were living over, then, on Mission Street. When --

18 A Eighteen and 17, yes.

19 Q When you met Mr. Robles. Yes?

20 A Yes.

21 Q And then after the -- the deal at Mr. Guerrero's house on
22 22nd and Harrison, did you start working for Mr. Robles as an
23 informant?

24 A Yes.

25 Q And as you were working for him as an informant, did you

1 spend time talking to him?

2 **A** Yes.

3 **Q** And in -- in cars?

4 **A** Well, I do the first deal with him. The first deal. And
5 at that time this deal was only for --

6 **Q** We'll talk about that in a minute. Okay? Answer the
7 question, okay?

8 **A** All right.

9 **Q** After you started working for him, over the next six
10 months or so, how many times did you talk to Mr. Robles?

11 **A** We talk a lot.

12 **Q** A lot?

13 **A** Yeah.

14 **Q** Did you talk to him in the Mission Street Station?

15 **A** Where?

16 **Q** Did you talk to him in the Mission Street police station?

17 **A** Yes. Most of times.

18 **Q** Did you talk to him in cars sometimes?

19 **A** Yes.

20 **Q** Did you talk to him on the phone sometimes?

21 **A** Yes.

22 **Q** Okay.

23 **A** In the phone, not too much because, when talk on the
24 phone, I don't understand. I have to see the face. My English
25 is no good. But if I see you when I talk, I can understand

1 more.

2 **Q** And did you communicate with Mr. Robles in Spanish or
3 English?

4 **A** English.

5 **Q** And over the times that you talked to him, did you tell
6 him about your history, your life?

7 **A** Probably, yes.

8 **Q** Did you tell him about being a cocaine dealer?

9 **A** Yes, I tell him -- sometimes they call me for show me a
10 picture. Somebody. And, I say, "Oh, yeah, I know that guy
11 from '99, 2000, he deal," that kind of things.

12 **Q** Did you tell Mr. Robles and then Mr. Vargas that there
13 were times in which you dealt in large amounts of cocaine?

14 **A** Yes.

15 **Q** Did Mr. Robles ever cause you to be prosecuted for
16 anything? Did he ever charge you with anything?

17 **A** No.

18 **MS. CAFFESE:** Well, excuse me; I'm going to make a
19 motion to strike, and objection. Lack of foundation.

20 **THE COURT:** Overruled.

21 **BY MR. HEMANN:**

22 **Q** Did Mr. Robles ever tell you you had to plead guilty for
23 any of those past crimes that you had committed, all of the
24 drug dealing?

25 **MS. CAFFESE:** Objection. That's an improper

1 question. Past drug dealing that he committed? Overbroad.

2 **THE COURT:** Overruled.

3 **BY MR. HEMANN:**

4 **Q** Did Mr. Robles ever tell you that you had to plead guilty
5 for all those past drug deals that you had done?

6 **A** No.

7 **Q** After that first time that Mr. Robles brought you to
8 Mission Station, did he ever arrest you again?

9 **A** No.

10 **Q** Did he ever arrest you for dealing kilos of cocaine?

11 **A** No.

12 **Q** In fact, did you talk to Mr. Robles about going out on the
13 street and selling drugs?

14 **A** He tell me, if I want to sell drugs -- later. Not that
15 day, but later, he told me, "You want to sell drugs, you can do
16 that."

17 **Q** How did that come up?

18 **A** That was like no one time, a lot of time, he say, "Dude,
19 why don't you dealing drugs? Everybody know you here, you
20 don't have no trouble do that." He say all I can't do is
21 killing somebody.

22 **Q** Say that again?

23 **A** Kill somebody.

24 **Q** He said all you couldn't do is kill somebody?

25 **A** No, no. I can do whatever I want, but no kill nobody. If

1 I kill somebody, he can't help. He don't want to help me.

2 **Q** What if you got arrested dealing drugs? What did he say?

3 **A** He say nobody going to arrest me for dealing drugs.

4 **Q** Did he tell you what you should do if you got arrested
5 selling drugs?

6 **A** He told me nobody going to arrest me because everybody
7 know me. And yeah, everybody know me in the police station,
8 but he say, "Somebody arrest you from another station, you
9 don't say nothing, just go -- when you come to the police
10 station tell the guys call me."

11 I say, "Okay."

12 **MR. HEMANN:** Your Honor, this would probably be a
13 pretty good breaking spot if it's --

14 **THE COURT:** Okay, ladies and gentlemen, we are going
15 to take our recess.

16 Remember the admonition given to you: Don't discuss the
17 case, allow anyone to discuss it with you, form or express any
18 opinion.

19 We will resume at 1:00. You can leave your binders on
20 your seats. Take your books with you.

21 (Jury excused)

22 (The following proceedings were held outside of the
23 presence of the Jury)

24 **THE COURT:** Okay, let the Record reflect the jurors
25 have left.

1 Mr. Hemann, let's return with Mr. Getz's concerns about a
2 limiting instruction. I mean, where are we going? Is it --
3 what's your view as to that?

4 **MR. HEMANN:** What I believe -- should we allow
5 Mr. Hernandez to step out?

6 **THE COURT:** He can; I don't care. Doesn't make any
7 difference.

8 **MR. HEMANN:** I believe that Mr. Hernandez will
9 testify that he was in and out of Mission Station, and he spoke
10 --

11 **THE COURT:** Okay, all right.

12 **MR. HEMANN:** -- in Mr. Furminger's presence.

13 **THE COURT:** Okay.

14 **MR. HEMANN:** But I think we'll -- if afterwards, a
15 limiting instruction is needed -- I've been trying to be good
16 about was Furminger here, was Vargas there, was he not. And
17 I'll continue to do that.

18 **THE COURT:** All right. Well, let's see where it
19 goes. But -- you know, I may give some limiting --

20 **MR. HEMANN:** I don't have a strong objection to a
21 limiting instruction if the Court believes it's appropriate.

22 **THE COURT:** I don't believe it's appropriate right
23 now. I think it might be appropriate once you complete your
24 examination, and I have some way to judge as to what, if
25 anything, it would be germane to Mr. Furminger. I just don't

1 know at this point.

2 So far, there's nothing there. So, obviously, I would
3 limit the testimony to Mr. Robles if this was all there is.

4 Now, if what's going to be is that he saw, you know,
5 Sergeant Furminger here, there, or so forth, which depends on
6 the context, depends on where he was and so forth and so on.

7 **MR. HEMANN:** There will be a bit. It is limited as
8 to this witness as to Mr. Furminger, but --

9 **THE COURT:** Let see where it is. And at the end, I
10 can give some appropriate limiting instruction. I think
11 Mr. Getz is entitled to a limiting instruction. That's my
12 point, and -- because all of this, without more -- and I guess
13 that's the key phrase, "without more" -- would be just as to
14 Mr. Robles.

15 **MR. HEMANN:** Yes, Your Honor.

16 **THE COURT:** Okay. Ms. Caffese.

17 **MS. CAFFESE:** Thank Your Honor.

18 **THE COURT:** Yes.

19 **MS. CAFFESE:** I would like to revisit the earlier
20 matter we discussed before Mr. Hernandez's testimony. But I
21 would ask that he not be present.

22 **THE COURT:** Sure. Okay. Mr. Hernandez, you can be
23 excused. And if you will -- the government agent will take
24 you.

25 (Mr. Hernandez leaves the courtroom)

1 **MS. CAFFESE:** Thank you, Counsel. Thank you,
2 Your Honor.

3 **THE COURT:** Yeah, sure.

4 **MS. CAFFESE:** Judge, I would ask that I be permitted
5 to cross-examine Mr. Hernandez on his domestic violence
6 contacts. And the reason for that --

7 **THE COURT:** Let me get the rule.

8 **MS. CAFFESE:** And if I may state the reason?

9 **THE COURT:** Well, wait, wait.

10 Here's my question: Isn't the admission of the conviction
11 subject to 403?

12 **MR. HEMANN:** It certainly is.

13 **THE COURT:** Fine. Okay, well, that's the basis of my
14 ruling. I think the -- the probative effect is very limited,
15 and the prejudicial effect is great. So under 403, I'm
16 excluding it.

17 **MS. CAFFESE:** I think -- I've kind of addressed the
18 issue a different way. If I may --

19 **THE COURT:** Well, you have to address it -- you may
20 address it any way you want to. But my suggestion is you'd
21 better address it my way, because that is the basis of my
22 ruling.

23 **MS. CAFFESE:** I understand, I understand. But --

24 **THE COURT:** You know, domestic violence --

25 **MS. CAFFESE:** He's --

1 **THE COURT:** Ms. Caffese, domestic violence is a -- is
2 a very explosive issue with respect to jurors, with respect to
3 the public in general. And it doesn't go necessarily to truth
4 telling; it goes to the person's character. And it has a great
5 deal of prejudicial effect.

6 Now, that's not to say that no convictions for domestic
7 violence wouldn't be relevant. They may be. I wouldn't
8 exclude all of them.

9 However, in this case, given the timing, given the age of
10 the conviction, given what the nature of the case is, given
11 what the Court views as its marginal relevance, if any, I'm
12 excluding it under 403.

13 **MS. CAFFESE:** However, Judge --

14 **THE COURT:** Yeah.

15 **MS. CAFFESE:** He put his character for peacefulness
16 in issue when he stated, "I'm a peaceful man." And he
17 testified to that on direct examination. That is misleading
18 the jury.

19 And I believe that Mr. Robles has a right to attack his,
20 quote, character for peacefulness, and his credibility, because
21 clearly this man's credibility is at the crux of the cross
22 examination.

23 **THE COURT:** Of course, of course, credibility is --
24 is significant. I'm not saying it's insignificant.

25 What's your response? I didn't hear him say, "I'm a

1 peaceful man."

2 **MR. HEMANN:** I didn't -- I confess I didn't hear it
3 either. And I don't -- I mean, I would like to just add to the
4 litany of reasons it should not come in.

5 He was 17 years old, when it occurred. We know absolutely
6 no facts about -- there's a -- an enormous spectrum of conduct
7 that falls under 273.5. I don't know anything about it. It
8 was a long time ago.

9 I think that -- I promise the Court that neither
10 Mr. Villazor nor I will argue for one nanosecond that he was
11 peaceful, if that's even what he said, which I don't remember.

12 **THE COURT:** Okay. I'm excluding it, under 403.

13 **MS. CAFFESE:** Thank you.

14 **MR. HEMANN:** Thank you, Your Honor.

15 (Recess taken from 12:00 to 1:02 p.m.)

16 **THE COURT:** Please be seated.

17 Okay. Let the record reflect all jurors are present. The
18 parties are present. You may proceed.

19 You may have a seat.

20 **THE WITNESS:** Thank you, sir.

21 **BY MR. HEMANN:**

22 **Q.** Mr. Hernandez, can you put the microphone back in front of
23 your face.

24 **A.** Yes.

25 **Q.** You remember you're still under oath --

1 A. Yes, sir.

2 Q. -- from earlier?

3 A. Yes, sir.

4 Q. So let's go back to what we talked about at Mr. Guerrero's
5 house at 22nd and Harrison. Remember we talked about that?

6 A. Yes, sir.

7 Q. And afterwards you testified Mr. Robles showed you the
8 ball of cash from the house, correct? The ball of cash with
9 the 5s and the 20s, when you were sitting on the steps.

10 A. Yes.

11 Q. Okay.

12 A. Oh, the money?

13 Q. The money.

14 A. Yes.

15 Q. Yes.

16 A. The money.

17 Q. You walked away from that. And as you were walking away
18 from that meeting with Mr. Robles, when he gave you the cash
19 and the crystal meth, did you intend to do more work with the
20 San Francisco police officers?

21 A. He called me a couple, like, times and told me we did good
22 and we had to do again. And I have a couple -- I think I talk
23 to him -- I talk to him after that again.

24 I do the first thing because I want him go away.

25 Q. You wanted him to go away?

1 **A.** Yeah, on the first day.

2 Then when he gave me money, he gave me the crystal meth,
3 and when I talked to him I think was -- he was one of my kind,
4 like me.

5 **Q.** He was one of your kind?

6 **A.** Yeah. Only thing is he had a badge and pistol. He was my
7 people. Criminal like me. Like the guys always hang out, you
8 know. He was the same. The only difference he had pistol and
9 badge. And I don't have no problems to do things later.

10 **Q.** So did you change your mind about doing more deals with
11 Mr. Robles?

12 **A.** Yes.

13 **Q.** Did you then sign up to be a confidential informant with
14 Mr. Robles?

15 **A.** Yes.

16 **Q.** Okay.

17 **MR. HEMANN:** Could you please display Exhibit 51.

18 (Document displayed.)

19 **BY MR. HEMANN:**

20 **Q.** Do you see this document, Mr. Hernandez?

21 **A.** Yes.

22 **Q.** Is that your signature down -- it says "Cesar HDZ." That
23 your signature?

24 **A.** Yes, sir. Yes, it's my E and my R, yes.

25 **Q.** Is this a document that you signed at the request of

1 Mr. Robles?

2 **A.** If my sign is over there, yes. This form, yes.

3 **Q.** After you did that first deal at Mr. Guerrero's house did
4 you do more deals like that, more -- more cases like that
5 with --

6 **A.** Robles.

7 **Q.** -- Mr. Robles?

8 **A.** Yes.

9 **Q.** I want you to describe for the jury how the cases
10 generally worked, what the plan was, okay.

11 So, and I want you to start with what was the -- what was
12 the first thing that would usually happen when you would do one
13 of these deals with Mr. Robles?

14 **A.** Well, I'm -- when I meet somebody that sell drugs or
15 somebody introduce me somebody -- because I know a lot of
16 peoples. But I tried to find a house. This is rule number
17 one. Mr. Robles tell me always had the house.

18 **Q.** Find the house. And why was that?

19 **A.** Where did they live.

20 **Q.** Okay.

21 **A.** And then we do a buy.

22 **Q.** Why was rule number one find the house?

23 **A.** They say going to be more money if we go to the house.

24 **Q.** Okay.

25 **A.** But I know the guy, we make a buy.

1 Q. How would you make the buy? Where would you get the money
2 to make the buy?

3 A. They gave me money to buy. Like, one 20, two 20s. 20
4 half gram cocaine.

5 Q. Say that again.

6 A. Twenty dollars like half gram.

7 Q. Half gram of cocaine?

8 A. Yeah, something like that. Maybe little bit less, about
9 \$20.

10 Q. You call it a 20?

11 A. Yeah. We don't say, Give me a half gram. We say, I want
12 20. Two 20s.

13 Q. Okay. You said they would give me money?

14 A. I mean him.

15 Q. At some point --

16 A. I said they because then the officer --

17 MS. CAFFESE: Excuse me. Objection. It is vague as
18 to time.

19 THE COURT: Can you lay a foundation?

20 MR. HEMANN: Certainly.

21 THE COURT: Thank you.

22 Objection sustained.

23 BY MR. HEMANN:

24 Q. After 22nd and Harrison, was another officer, other than
25 Mr. Vargas -- or Mr. Robles also involved?

1 **A.** Yes.

2 **Q.** Who was that other officer?

3 **A.** Mr. Vargas.

4 **Q.** And did you have an understanding, after the incident at
5 22nd and Harrison, what the relationship between Mr. Vargas and
6 Mr. Robles was?

7 **A.** Yes, after that. Not before. After.

8 **Q.** Okay.

9 **A.** I meet Mr. Vargas because he always ride with Mr. Robles.

10 **Q.** In the same car?

11 **A.** In the same car.

12 **Q.** Okay. So you said they would give you money to make buys?

13 **A.** Yes.

14 **Q.** Okay.

15 **A.** In the beginning, Mr. Robles.

16 **Q.** And then --

17 **A.** I only speak with Mr. Robles in the beginning, before he
18 went away to ride motorcycles.

19 **Q.** Before he went away to ride motorcycles?

20 **A.** Yes. I dealing only with him, but Vargas was around.

21 **Q.** Vargas was around?

22 **A.** Yes. But I never deal with him. I deal with Mr. Robles.

23 **Q.** Okay. So when you would make the buy, after you
24 identified the house you would make a buy?

25 **A.** Yes.

1 Q. And you would get some money for that; correct?

2 A. Yes.

3 Q. Where would that money come from?

4 A. I don't know. They give it to me. And I sign a paper.

5 Maybe -- I don't know -- later I find out they have some kind

6 of money because they working in the narcotics unit. So what I

7 understand later they have some kinds of money.

8 MS. CAFFESE: Judge, excuse me. Objection. Hearsay.

9 THE COURT: Overruled.

10 BY MR. HEMANN:

11 Q. So your understanding is the narcotics unit had some
12 money?

13 A. Give it to the officers. I don't know.

14 Q. Okay. So you said you had to sign a paper when you got
15 the money to do the buys, correct?

16 A. Yes.

17 Q. Was it like an official San Francisco Police Department
18 paper?

19 A. Yes. Not all the time. Sometimes.

20 Q. Okay. Once you get money to go do buys, what would you
21 do?

22 A. I go to buy. And then I come back and I give the drugs.

23 Then they give me like \$30, \$40. But I don't care about money.

24 The money -- the good thing is when they hit the house after

25 that.

1 Q. Okay. So you got a little bit of money at the beginning?

2 A. For to do the buy. And I sign papers for that.

3 Q. That was, like, official?

4 A. Yes.

5 Q. Okay. So then would you provide the officers, Mr. Robles,
6 and then later Mr. Vargas, with information about the house?

7 A. Yes, sir.

8 Q. And it would be the kind of information that you described
9 earlier that you provided about the inside --

10 A. Yes, everything --

11 Q. Let me finish, okay. I want you to answer, but let me
12 finish first.

13 A. Okay.

14 Q. Would it be the same kind of information about what the
15 inside of the house looked like?

16 A. Everything I know, I tell them. I tell the truth.

17 Q. Give the jury some examples of the things that you needed
18 to tell them about the inside of the house.

19 A. Yes.

20 Q. Some examples. What kind of things?

21 A. Like what is the drugs. Like what apartment, what is the

22 room he sleep. It's a building. They ask me what is the

23 number of the apartment. If I know where they put the drugs.

24 Things like that. And how much money they -- how much money I

25 think they have, and how much drugs. All kinds of drugs. That

1 kind of things.

2 That happened one day before they hit any house. They
3 wait one day.

4 **Q.** So would you provide that information, and then shortly
5 thereafter --

6 **A.** Yeah. Actually, I point the house too.

7 **Q.** You would show them what the house was?

8 **A.** Yeah. Sometimes -- most of the times I tell them what is
9 the house. We going to do the buy one day before they hit that
10 place, yeah.

11 **Q.** Then you said they would hit the place?

12 **A.** When they go to the house, arrest the guy.

13 **Q.** Would you meet with them after they hit the house?

14 **A.** Yes. Then I just wait for next day. They call me. They
15 do in the mornings. They working most of the time in the
16 mornings. That happened in the mornings.

17 So when they hit the house they call me -- he call me and
18 I go meet him. And then when the good money come, the \$80.

19 **Q.** And where would you usually meet them?

20 **A.** The police station, sir. Valencia.

21 **Q.** Would you recognize the Mission Police Station, what it
22 looks like?

23 **A.** Yes.

24 **Q.** Okay.

25 **MR. HEMANN:** Could you please show the witness what's

1 been marked for exhibit --

2 **THE WITNESS:** 17th and Valencia.

3 **MR. HEMANN:** 17th and Valencia, just for the witness,
4 please.

5 **BY MR. HEMANN:**

6 **Q.** Could you look at the picture which has been marked as
7 Exhibit 3.

8 Do you see it up there on the screen?

9 **A.** No. Oh, yes.

10 **Q.** There?

11 **A.** Yes. This is the front -- the front door. In the
12 beginning I always come from the back door.

13 **Q.** Okay. We'll talk about that in a moment. That's the
14 front door of Mission Station?

15 **A.** Yes.

16 **MR. HEMANN:** Your Honor, the government moves Exhibit
17 3 into evidence.

18 **THE COURT:** Admitted.

19 (Trial Exhibit 3 received in evidence.)

20 **BY MR. HEMANN:**

21 **Q.** Now, you said there were two doors you would go in; right?

22 **A.** Yeah. That door you go to elevator.

23 **Q.** Slow down just a little bit.

24 **A.** Okay.

25 **Q.** You indicated the front door you go in there's an

1 elevator.

2 **A.** Before I come in the back door.

3 **Q.** There was also a back door to Mission Station?

4 **A.** Yes.

5 **Q.** Did you sometimes go in both doors?

6 **A.** Later I'm use that -- the -- in the beginning I have a lot
7 of scare, a lot of scared come to the police station. Afraid
8 somebody see me. Come inside to the police station, I look
9 everywhere. Don't want nobody see me.

10 **Q.** And later did you become more comfortable?

11 **A.** Not more comfortable. But, I don't know, just put my
12 hoodie, go in the front door, run.

13 **Q.** When you went into the police station is there a place
14 that you would usually go in the police station?

15 **A.** Yeah, only that police station every time.

16 **Q.** Was there a place inside that police station that you
17 would usually go?

18 **A.** Yes. Same room.

19 **Q.** That same little room that you went on that first day?

20 **A.** Yes. Yes.

21 **Q.** Okay. And you said, okay, they would call you after they
22 hit the house?

23 **A.** Yes.

24 **Q.** And would you talk to them about it in that little room?

25 **A.** Yeah. We talking about the -- not exactly what did they

1 do, but they told me what happened, you know. And I go for
2 more money. And the guys, they tell me, okay, this is your
3 part.

4 **Q.** Now, when you met in that small room?

5 **A.** Yeah.

6 **Q.** Can you tell the jury who was present? Who was there?

7 **A.** Mr. Robles. Mr. Vargas most of the times. Sometimes
8 Mr. Sergeant.

9 **MS. CAFFESE:** Could we get a date in terms of --

10 **THE WITNESS:** Not all the time. Couple times he was
11 standing up over there.

12 **BY MR. HEMANN:**

13 **Q.** And when "he was standing up over there" what do you mean?

14 **A.** Listen what we do.

15 Sometimes they do something like -- I don't know. He was
16 over there in the little room. And sometimes they stand up,
17 like, watching us. Not all the times. Probably, I say, like,
18 four times, six times. Not all the time.

19 **Q.** And was -- Mr. Furminger, Sergeant, did you know -- at the
20 time did you know his name to be Furminger?

21 **A.** No, sir.

22 **Q.** How did you refer to him?

23 **A.** Sergeant.

24 **Q.** And that's the individual that you earlier --

25 **A.** Yeah.

1 Q. Let me finish the question, okay.

2 A. Okay.

3 Q. And the person you knew as Sergeant, was that the person
4 you earlier identified as Mr. Furminger?

5 A. Yes. Because Mr. Robles and Vargas call him the sergeant.
6 They never called him by name. So I called him Sergeant. This
7 is why.

8 Q. Did you discuss receiving cash from the houses in front of
9 Sergeant Furminger?

10 A. Yes.

11 Q. When you began --

12 A. We discussed to rob peoples one time.

13 Q. What's that? Say that again please.

14 A. We have one discussion about rob -- rob one guy, and he
15 was there.

16 Q. Okay. We'll talk about that in a moment, okay.

17 When you first began discussing this scheme with
18 Mr Robles --

19 A. Yeah.

20 Q. -- did you have an agreement with him about the amount
21 that you would get from the house?

22 A. Well, after -- after we hit the first place and, I think,
23 we do another thing, I tell them I wanted 30 percent, something
24 like that. 30 percent in drugs. 30 percent in money.

25 Q. Okay.

1 **A.** They say yes. But they never did. They hit places they
2 say, oh, we don't got no too much money so give you
3 (unintelligible).

4 **Q.** That say that last part again.

5 **A.** I been with the guys before they hit the place, so I know
6 what did they have most of the time.

7 **Q.** So how much would you usually get; do you know?

8 **A.** Hundred, 80, 60.

9 **Q.** You said you had been in the house before?

10 **A.** Yeah.

11 **Q.** So did you --

12 **A.** Oh, how much they have?

13 **Q.** Yeah.

14 **A.** I don't know. They always had the roll of the bills
15 (indicating).

16 **Q.** And you indicated about, maybe, three or four inches of
17 fingers?

18 **A.** Yeah like that (indicating). Dealing drugs. Dealing 20s.
19 Cocaine. Dealing all day. I don't know.

20 **Q.** So was there a lot of cash at these houses?

21 **A.** When I do the buys and then put the money, I see.

22 **Q.** You saw the amount of money that the drug dealers had?

23 **A.** Yeah, most of the times. And what kind of drugs they
24 have.

25 **Q.** Did you ever have an argument with Mr. Robles about how

1 much money you were getting in Mission Station?

2 **A.** One day, I think, we had little argument because he always
3 show up with \$40, \$60. One day we have argument and he's like
4 he got a little attitude --

5 **Q.** Say that again. He had what?

6 **A.** Attitude.

7 **Q.** Attitude?

8 **A.** Look motherfucker, the money is not only for you. You're
9 not the only one. I have to split the money with bosses, my
10 boss. But very bad, was look, motherfucker. And then I be
11 like okay.

12 **Q.** Were you a little scared?

13 **A.** Yes.

14 **MR. GETZ:** May I make a request? I would ask that
15 the Court instruct the jury that the testimony "I have to split
16 the money with my boss" is not offered for the truth of the
17 matter that Furminger was to get the money, but only that it
18 was said.

19 **THE COURT:** Well, I think -- first, let me look at
20 the testimony.

21 (Pause)

22 **THE COURT:** What's your response to that?

23 **MR. HEMANN:** His statement is not hearsay under Rule
24 801(d)(2)(E). It's a co-conspirator statement. It's not
25 hearsay.

1 **THE COURT:** Well, I think that's a correct statement
2 of the law. The question is whether there is sufficient
3 evidence of a conspiracy -- which there isn't at this point --
4 that it be binding upon the co-conspirators in terms of
5 furtherance of the conspiracy.

6 I think I can take care of it this way, but let me talk to
7 the jury. And then if you have some concerns you can raise
8 them.

9 Ladies and gentlemen, a statement -- the witness has
10 testified as to a conversation he had with Mr. Robles.

11 Is that correct?

12 All right. In which this witness has said Mr. Robles said
13 a certain thing about splitting money.

14 Now, number one is that's a statement -- it's testimony of
15 a witness about a statement purportedly made by Mr. Robles.
16 And you will be the judge as to whether or not you believe this
17 witness when he says that's what was said, okay. So everything
18 I say about that statement is in the context of the fact that
19 it is this witness's testimony which you are free to accept and
20 free not to accept based upon your determination as to
21 credibility.

22 Next, if you were to find that it was a -- that this
23 witness is credible on that subject, and accurately reported
24 that statement, you then have to determine whether or not it
25 has any impact on, quote, on Mr. Furminger, as an example,

1 because his counsel has acknowledged that, I think, Sergeant
2 Furminger was a boss or a supervisor of Mr. Robles. So I think
3 that's not in contention.

4 As to that statement, however, there are two things that
5 one would say: It is evidence, if accepted as true, as a
6 statement made by Mr. Robles. That is to say it's a statement
7 which would constitute an admission or at least a statement of
8 the defendant. And you can consider it as -- as evidence
9 against Mr. Robles. It doesn't go just to the state of mind.
10 It isn't hearsay, an exception to the hearsay rule.

11 As to Sergeant Furminger, we are not at a point, yet, in
12 the proceedings where we could say whether or not it would be
13 admissible as to him. And that's -- so I want you to just keep
14 that in mind. I will, at a later time, address that subject.
15 But now it's clearly admissible as to Mr. Robles. It may or
16 may not be admissible as to Sergeant Furminger.

17 And, obviously, I can discuss it further with you,
18 Mr. Getz, outside the presence of the jury, if you wish. But I
19 think that that leaves it where it ought to be at this point in
20 the proceeding.

21 **MR. GETZ:** Yes. The Court has accurately addressed
22 my concern. And when the state of the record is more developed
23 we can revisit it.

24 **THE COURT:** Thank you.

25 **MR. GETZ:** Thank you.

1 **THE COURT:** Thank you Mr, Getz.

2 You know, I never know how clear those statements are from
3 me.

4 (Laughter)

5 **THE COURT:** But we'll all do the best we can. Okay.
6 Thank you.

7 Go ahead.

8 **MR. HEMANN:** Thank you, Your Honor.

9 **BY MR. HEMANN:**

10 **Q.** Mr. Hernandez, you described, sort of, the way these --
11 these deals generally went, right?

12 **A.** Yes, sir.

13 **Q.** About how many of these kinds of deals did you do with
14 Mr. Robles?

15 **A.** How many deals I do with him?

16 **Q.** How many deals did you do with him?

17 **A.** Not too much. Not too many.

18 **Q.** How many do you think?

19 **A.** Five, six. I don't remember.

20 **Q.** And other than the first --

21 **A.** Well, we do another ones but was not my -- they ask me
22 about, You know this guy? Say, You know where he live? I say
23 yes. I don't pick it up. They show me.

24 But the one I tell them, not too many, no. Few ones.

25 **Q.** Of the five or six --

1 **A.** Probably, probably something like that. I don't remember
2 exactly.

3 **Q.** Of that number, did you not do the first one with
4 Mr. Vargas, correct?

5 **A.** Yes.

6 **Q.** Did you do the other ones with Mr. Vargas?

7 **MS. CAFFESE:** Objection. Leading.

8 **THE COURT:** Objection sustained.

9 Would you re-ask the question.

10 **BY MR. HEMANN:**

11 **Q.** The first one that you talked about, 22nd and Harrison?

12 **A.** Yes.

13 **Q.** Was Mr. Vargas present for that?

14 **A.** When I tell them or when they go to the house?

15 **Q.** When you told them.

16 **A.** I don't remember. I don't think so, no. It was another
17 officer, but for that moment I don't know.

18 **Q.** For the other deals in which Mr. Robles was involved --

19 **A.** Yes.

20 **Q.** -- was Mr. Vargas also involved?

21 **A.** Yes.

22 **Q.** At some point in time did Mr. Robles leave the Mission
23 Station narcotics group?

24 **A.** Yes. He told me he go to mortgage cycle unit at 850
25 Bryant.

1 Q. Motorcycle unit at 850 Bryant?

2 A. Yeah. Ride motorcycles. I don't know how they call it
3 that, but he told me 850 Bryant.

4 Q. And when Mr. Robles told you he was leaving to go to the
5 motorcycle group did you discuss it with him?

6 A. He told me?

7 Q. Yeah.

8 A. Yes. And then I'm staying Mr. Vargas.

9 Q. And did you ask Mr. Robles why he was leaving to go to the
10 motorcycle group?

11 A. He told me he rode motorcycle. Well, I tell him, say, you
12 not working narcotics no more? He told me no, it's what I
13 want, I always want to be in the motorcycle.

14 And then I tell him, like, oh, you're not going to make no
15 more money. And he like, you know what, there is more money
16 there because I'm going to stop a lot of motherfuckers, illegal
17 motherfuckers.

18 MR. GETZ: I didn't hear that.

19 THE COURT: I couldn't hear the statement so I
20 don't --

21 MR. HEMANN: I'll ask him to repeat it slowly.

22 BY MR. HEMANN:

23 Q. When you asked him -- when you said you're not going to
24 make any more money there --

25 A. Yeah.

1 Q. Let me finish.

2 A. Okay.

3 Q. When you said you're not going to make anymore money there
4 how did he respond to you? And say it slowly.

5 A. He respond something like, no, dude, I'm going to make
6 more money because you know how many illegal motherfuckers I'm
7 going to stop with no driver's license. I be like -- that's
8 it.

9 Q. Okay.

10 A. He said he want to work only patrol. Patrol and stop. I
11 don't know. I don't know what he had to do, but that the
12 answer he give to me. I say he not going to make no more money
13 narcotics. And he say he make more.

14 Q. After Mr. Robles left did you continue to do these kind of
15 deals, that you described earlier, with Mr. Vargas?

16 A. Yeah. In that moment I have more -- I talking more with
17 Vargas. I never been his friend, but Vargas is kind of more
18 personal. I don't think you can trust in him, but it's more --
19 yeah, you can trust. He's more friendly. I don't -- I don't
20 know how explain this. But way different than Mr. Robles.

21 Q. I have a simple question, which is, after Mr. Robles left
22 to go to motorcycles did you do some more of these deals with
23 Mr. Vargas?

24 A. Yes, sir. Yes, sir.

25 Q. About how many?

1 **A.** Well, with Mr. Vargas because -- we had a lot. Maybe 12.

2 **Q.** Okay.

3 **A.** Maybe more than that.

4 **Q.** Okay. How many more do you think? Give me an estimate.

5 **A.** No more than 15. No less than 10.

6 **Q.** Okay.

7 **A.** Something like that.

8 **Q.** All right.

9 **A.** Well, we do a lot -- he ask me a lot of times about
10 people's -- I'm talking about the one that got turned in.

11 **Q.** Let's go back in time now, okay, back to when you were
12 working with both Mr. Robles and Mr. Vargas before Mr. Robles
13 left. Okay?

14 **A.** Okay.

15 **Q.** Did you ever work much with marijuana as a drug dealer?

16 **A.** Only when I was a kid. But in United States I never
17 dealing with marijuana.

18 **Q.** Okay. Were you ever involved in selling marijuana in the
19 Mission?

20 **A.** I never involved in selling marijuana, but couple friends
21 deal in marijuana so.

22 **Q.** So what?

23 **A.** Well, I never deal, but I know where is marijuana.

24 **Q.** So you know people who sold marijuana?

25 **A.** Yeah, I know some, couple people sell marijuana.

1 Q. Was there an occasion in which Mr. Robles asked you to
2 help him sell some marijuana?

3 A. Uhm, he don't ask me to sell. He told me he have a friend
4 that have a good-quality marijuana.

5 Q. Okay. So stop for a moment.

6 A. Okay.

7 Q. Was there a time that you noticed, with Mr. Robles, some
8 marijuana?

9 A. Repeat.

10 Q. Was there a time when you were with Mr. Robles when you
11 noticed some marijuana?

12 MS. CAFFESE: Objection. Vague as to time.

13 THE COURT: Overruled.

14 BY MR. HEMANN:

15 Q. Was there a time that you were with Mr. Robles --

16 A. Yes.

17 Q. -- that you noticed some marijuana?

18 A. Oh, yes, yes.

19 Q. Okay.

20 A. I go in the car. And I smell marijuana in the car, yes.

21 Q. Okay.

22 A. No was like --

23 Q. Hold on a minute. I am going to ask you a question. All
24 right?

25 A. Okay.

1 Q. So what were you doing on that day?

2 A. I don't remember what I do that day but they call me like
3 always. I always -- sometimes I call them and asking if I have
4 money for burrito, \$20, \$40. Sometimes they call me show me a
5 picture. Maybe I have something for them. But I don't
6 remember why they call me that day.

7 Q. When you say --

8 A. Are we talking about the day they have the garbage bag in
9 the back?

10 Q. I'm asking, do you remember a day when they called you
11 when there was some marijuana?

12 A. I don't remember the date.

13 Q. Not the date. Do you remember that that happened?

14 A. Yes.

15 Q. Where were you?

16 A. Somewhere from the Mission.

17 Q. How did you come into contact with Mr. Robles?

18 A. Every time he call me on the phone. And I tell him where
19 I am, and he pick me up.

20 Q. On that day did he come and pick you up?

21 A. Yes, sir.

22 Q. And was he in a car?

23 A. Yes. He was in the car, driving the car with Mr. Vargas.

24 Q. And was Mr. Vargas in the passenger seat?

25 A. Yes. Like most the time most -- I think every time Vargas

1 was there.

2 Q. Okay.

3 A. Most of the times or every time.

4 Q. Did they drive up near you?

5 A. Yes. Every time that they stop -- I wait. They comes.

6 Make eye contacts. So they park, like, half block or close to
7 where I am. And then I open the back door, and I'm laying down
8 in the back, back of the -- when I go meet him I try to have a
9 hoodie.

10 Q. Were you wearing a hoodie?

11 A. Yeah. Most of the time, yes. So when they stop I open
12 the back door, I jump in the car. And I'm sunken laying down
13 in the back of the seat.

14 Q. Why were you laying down in the back of the seat?

15 A. I don't want nobody see me I'm riding with the police
16 officers.

17 Q. And on that day did you notice anything unusual in the
18 car?

19 A. Was a garbage bag.

20 Q. Where was the garbage bag?

21 A. In the driver back in the floor.

22 Q. Behind the --

23 A. Yes, in the floor.

24 Q. Okay. And was it a -- just a garbage bag? How was the
25 garbage bag situated in the car?

1 **A.** Looked like something inside. I never asked what it is,
2 and they never told me.

3 **Q.** Did you notice anything about how the car smelled?

4 **A.** It smelled to marijuana.

5 Well, that was in my nose. I jump in the car and that was
6 in my nose.

7 **Q.** The bag was in your nose?

8 **A.** Yeah.

9 **Q.** And did you smell a certain smell coming out of the bag?

10 **A.** Yeah.

11 **Q.** What was that smell?

12 **A.** Strong marijuana. At that time it wasn't dispenser
13 everybody talking about that. What good marijuana. Not like
14 Mexican marijuana. Mexican marijuana is different smell.

15 **Q.** It was a potent, strong smell?

16 **A.** Yes.

17 **Q.** What did you do after you hopped in the car and smelled
18 the marijuana?

19 **A.** What I do?

20 **Q.** Yeah.

21 **A.** Nothing. I don't ask nothing. I just still laying down.
22 I don't asking them. He don't tell me nothing.

23 **Q.** Were you able to notice what the shape of the things in
24 the plastic bag was?

25 **A.** At that moment I think it was marijuana. And I'm still

1 thinking it's marijuana. I don't know.

2 **MS. CAFFESE:** Excuse me. Objection. Motion to
3 strike as hearsay, speculation -- excuse me, speculation.

4 **THE COURT:** Well, it's nonresponsive. So it will be
5 stricken.

6 Go ahead.

7 **BY MR. HEMANN:**

8 **Q.** Were you able to notice the shape of the -- what the
9 things in the plastic bag looked like, the shape of them?

10 **A.** (Indicating.)

11 Like -- well, I don't put too much attention in that. But
12 when I was young I'm dealing with marijuana and I have a
13 friends dealing with marijuana so I know it's marijuana.

14 **Q.** I'm asking if you noticed it that day, what the shape of
15 the plastic bag was.

16 **A.** What big?

17 **Q.** Yeah.

18 **A.** (Indicating.)

19 Maybe like this, that high (indicating). I don't know
20 something like that. Plus -- because it's -- it's a tie
21 (indicating). Big tie, big bag. You know the big garbage bag
22 where this is tied.

23 I don't know. About this (indicating) -- I don't pay
24 attention to that.

25 **Q.** Okay. After you got out of the car and noticed the

1 marijuana smell did you go somewhere with Mr. Robles and
2 Mr. Vargas?

3 **A.** Well, we went to the police station. And that day we
4 don't park in the police station.

5 We park -- in the 17 and Valencia, across the street, the
6 taqueria, in the back is a funeral home.

7 **Q.** Funeral home?

8 **A.** Yeah, a little alley. We park over there.

9 **Q.** When you usually drove over there with them did you park
10 in the police station --

11 **A.** Yeah, we park in the police station --

12 **Q.** Let me ask it again. The court reporter is typing it, so
13 she has to finish my whole question before you talk.

14 **A.** Okay.

15 **Q.** Okay. When you would drive over there, usually, did you
16 park in the police station parking lot?

17 **A.** Yes.

18 **Q.** Was it different that day? You parked in a different
19 space?

20 **A.** Yes. Sometimes not exactly in the police station, on the
21 other side, but near to the police station. That day we go to
22 the little alley. I don't know why.

23 **Q.** After you parked there, did you go into the police station
24 with --

25 **A.** Yes, we go to the police station, inside.

1 Q. At some point after that did you speak with Mr. Robles
2 about marijuana?

3 A. Yes. He told me he have a friend.

4 Q. What did Mr. Robles tell you about marijuana?

5 A. He say he have a friend that he have a few pounds, the
6 good quality purple marijuana. They asked me if I know
7 somebody we can sell it cheaper.

8 Q. How did he describe it, good quality?

9 A. Good quality purple.

10 Q. Purple?

11 A. Purple, yeah.

12 Q. When he said "purple marijuana" did you know what he was
13 talking about?

14 A. Yeah.

15 Q. What was he talking about?

16 A. The new quality that's in the Mission that moment, good
17 marijuana. I only know about that marijuana and the Mexican
18 marijuana.

19 Q. So you knew the difference between that marijuana and
20 Mexican marijuana?

21 A. And peoples dealing only that kind. My understanding now
22 is a thousand different, but back in that time I only know that
23 two, purple marijuana and Mexican marijuana. There's two kinds
24 in the streets.

25 Q. Did Mr. Robles ask you to do anything in particular with

1 regard to that marijuana that he was talking about?

2 **A.** Yeah. He told me if I know somebody that we can sell it.

3 **Q.** Okay.

4 **A.** He say he know somebody. He don't say he got it. He say
5 one of my friends have a good marijuana. And he say you can
6 help.

7 But I never dealing with marijuana in the United States so
8 I'm not interest.

9 **Q.** He asked you if you knew anybody that could help sell it?

10 **A.** Yes.

11 **Q.** Did he mention anybody in particular?

12 **A.** No.

13 **Q.** Did you -- how did you respond to that?

14 **A.** Well, I tell there's no money over there. And he say,
15 well, it's cheap. He told me some number like 1800.

16 **Q.** 1800 for what?

17 **A.** I believe for a pound.

18 **Q.** Okay.

19 **A.** And the street was like 25.

20 **Q.** So did you go back and forth with him in conversation for
21 a while?

22 **A.** No. Just that time.

23 **Q.** Now, on that day did you talk back and forth with him
24 about selling this marijuana?

25 **A.** Yes. He -- he tried to convince me to looking for

1 customers. But I'm not interested in marijuana, my whole life,
2 in marijuana.

3 **Q.** Did you tell him you were not interested?

4 **A.** He don't tell me much. He was like, there is money, help
5 me go looking for customers.

6 **Q.** Did you then go -- did you ever go look for somebody to
7 sell some marijuana?

8 **A.** No.

9 **MR. HEMANN:** And, Your Honor --

10 **THE WITNESS:** Somebody -- okay.

11 **MR. HEMANN:** This is not offered for the truth, Your
12 Honor.

13 **BY MR. HEMANN:**

14 **Q.** Afterwards did you go out on the street and hear people
15 talking about marijuana?

16 **A.** Some kinds of peoples ask me -- telling me about they have
17 somebody that have good quality cheaper marijuana. I mean good
18 quality but cheaper price. Not cheap marijuana. Cheaper
19 price.

20 **Q.** What price did you hear mentioned?

21 **A.** They told me 2,000 at that moment.

22 **Q.** And that was near in time with the incident with
23 Mr. Robles?

24 **A.** Yes.

25 **Q.** When?

1 **A.** Like one day, or two. I already heard that day and next
2 day. After that nobody say nothing.

3 **Q.** And was that unusual to hear people talking about that?

4 **A.** Yes, yes.

5 **Q.** Mr. Hernandez, do you know somebody by the name of Sergio
6 Sanchez?

7 **A.** Sergio Sanchez, I don't know Sergio Sanchez. I know
8 somebody Sergio in the Mission. I know a lot of Sergio. But I
9 think Sergio the one --

10 **Q.** Do you know a person in the Mission, who worked in the
11 Mission, named Sergio?

12 **A.** I know one Sergio that work in 20 and Mission by stealing
13 things from peoples.

14 **Q.** Okay. You have to talk about that in a little bit more
15 detail, okay.

16 **A.** Okay.

17 **Q.** You said he worked where in the Mission?

18 **A.** I know this Sergio for long time. He always -- he always
19 is in the 20 and Mission.

20 He buy computers. If anybody have something to sell they
21 go over there. They have no receipt and he buy. Electronics,
22 computers, phones. iPhones. Anything. He -- he is there
23 forever. Buy stolen things.

24 **Q.** Buys stolen things?

25 **A.** Yes.

1 **MR. HEMANN:** Ms. Lane, could you please put up
2 Exhibit 277 -- which is in evidence, Your Honor -- and page 7.
3 (Document displayed.)

4 **BY MR. HEMANN:**

5 **Q.** Do you see this picture on the screen, Mr. Hernandez?

6 **A.** Yes.

7 **Q.** And is that the corner on which Sergio worked?

8 **A.** Yes. He always be over there in that corner. Always.

9 **Q.** And how did you know that he was in the business of buying
10 and selling stolen things?

11 **A.** I know him for little -- before.

12 **Q.** So you had talked to him about it?

13 **A.** I know him. We never discuss his business, but I know
14 what he do. I know.

15 **Q.** How do you know? You have to explain. How do you know?

16 **A.** Uhm, I dealing in the street. In the Mission we know
17 everybody. I know the guys that sell fake I.D.s. I know the
18 guys that different kinds of drugs.

19 I walk that area all the time. I know him. I've known,
20 like hundred percent sure, that he do that. I know him. And
21 he know me.

22 **Q.** Was there a day that you went over near that corner with
23 Mr. Robles and Mr. Vargas?

24 **A.** No. We don't go to that corner.

25 **Q.** Did you see Mr. Sergio at another corner?

1 **A.** Yes.

2 **Q.** Where did you see him?

3 **A.** In that same street, 20 -- that same street, but in the
4 Van Ness, two blocks.

5 **Q.** So two blocks from this corner you saw Mr. Sergio?

6 **A.** Yes.

7 **Q.** Okay. And what were you doing with Mr. Robles and
8 Mr. Vargas that day?

9 **A.** That day I believe I call him for I need -- if they have
10 money for the burrito. And they told me no. They show me one
11 picture. They show me one picture that day. So I go in the
12 car, and asking them for money.

13 **Q.** Let me stop you. You said this a couple of times, that
14 they show you a picture?

15 **A.** Sometimes.

16 **Q.** Can you --

17 **A.** (Unintelligible.)

18 **Q.** Let me. Okay?

19 **A.** Okay.

20 **Q.** When they showed you a picture, what were they showing you
21 a picture for?

22 **A.** If I know that guy.

23 **Q.** And then after that you asked them for money?

24 **A.** Yes.

25 **Q.** Okay. And that's what you were doing that day?

1 **A.** Yes. At the back of the car.

2 **Q.** In the back of their car?

3 **A.** Yes.

4 **Q.** And when you asked them for money, what did they do?

5 **A.** He say he don't have no cash. And then he tell Vargas he
6 got cash. And he say he don't got no cash. Too early. 9:00,
7 maybe a little bit more. And then they say, okay, I'm going to
8 call. At that moment I don't pay attention who they call. So
9 he call somebody.

10 **Q.** And tell me, you're in the car; right?

11 **A.** Yeah. I'm in the back of the car.

12 **Q.** Who's sitting where in the car?

13 **A.** Robles and Vargas.

14 **Q.** In the front seat?

15 **A.** In the front seat.

16 **Q.** Where were you?

17 **A.** In the backseat.

18 **Q.** Sitting behind --

19 **A.** Covered with my hoodie. And I look a little bit between
20 that.

21 **Q.** Who were you sitting behind? Which one were you behind?

22 **A.** Both. I'm laying down. My feets is behind Vargas, and my
23 head is behind him.

24 **Q.** Behind?

25 **A.** Robles.

1 Q. You said you had a hoodie on?

2 A. Whatever side I come. I'm behind, laying down in the
3 backseat. But sometimes I'm looking with my hoodie, looking in
4 the mirror, or both.

5 Q. So when you found out they didn't have any cash what did
6 you do?

7 A. I say -- Robles told me don't worry, we going to have cash
8 in a minute. He make a call.

9 Q. Okay. So did you guys go somewhere and get cash?

10 A. Yeah. Yes. At one point they looking, they tell Vargas,
11 you don't see him? And then say, yeah, yeah, Sergio's over
12 there. And that moment I know him. I say no, no, no. Wait.
13 I know Sergio. And he turned the car back. And he walking.
14 Because I think guy's walking to the car.

15 Q. So you drive up?

16 A. Yeah.

17 Q. Were you able to see Sergio over the top of the window?

18 A. We talking and talking, and I see the side.

19 Q. And what did you say?

20 A. I know that guy.

21 Q. So who was driving?

22 A. Mr. Robles.

23 Q. What did Mr. Robles do?

24 A. A U turn.

25 Q. A U turn?

1 **A.** Yes, a U turn.

2 And maybe he jump in the car. I say, wait, wait, wait. I
3 think Sergio's walking to the car. Maybe like I do. Every
4 time I see his car I jump in. I don't know.

5 At some point I'm -- only Vargas stay in the car. And one
6 point I'm looking, looking back. And I see him talk to him,
7 talking.

8 **Q.** When Mr. Robles got out of the car did he have anything
9 with him?

10 **A.** No.

11 **Q.** At some point did Mr. Robles come back to the car?

12 **A.** He have a manila envelope, a little one.

13 **Q.** A manila envelope?

14 **A.** The little just one you send letters.

15 **Q.** Okay.

16 **A.** And give it to Vargas, and throw away the page like
17 something.

18 **Q.** To Mr. Vargas?

19 **A.** Yeah. And then Vargas open it and give me \$60, I think,
20 from that envelope. 60 or \$80. I don't remember, sir. I
21 really don't remember. It was like 60 or \$80.

22 **Q.** Okay. After you drove --

23 **A.** And asking him I know that guy. His name is Sergio. And
24 he say, oh, he's good guy.

25 **Q.** Who said that?

1 **A.** Mr. Robles. And that guy is not too bad. He buy stolen
2 things. He's very good guy.

3 **Q.** And that's what Mr. Robles said?

4 **A.** Yes, sir.

5 **Q.** Did Mr. Robles ever mention to you, when you were working
6 with him, a person by the name of Manny?

7 **A.** Yes.

8 **Q.** And where was Mr. Robles when he mentioned the person
9 named Manny?

10 **A.** They come into the police station like always I go to
11 police station lot of times.

12 We always meet in the little room inside. But that day
13 I'm coming the front door.

14 **Q.** The front door, the picture we looked at earlier?

15 **A.** Yeah, you show me. I come from that door. There's the
16 elevator and that door to come to the office. But this side
17 is -- there's one door, big doors like that ones. But this was
18 like a conference room. Large chairs inside. Big room like
19 half of this.

20 **Q.** It was a big room and --

21 **A.** Like half of this (indicating). Half, yes.

22 **Q.** And was there a big table in the middle?

23 **A.** Yeah. One table in the side and chairs. And they say
24 come on, come on. So I go over there.

25 **Q.** And who said come in, come in?

1 **A.** Robles.

2 **Q.** Was anybody else in the room?

3 **A.** Vargas. Sorry, Vargas.

4 And we talking about something. And then they start
5 telling me about Manny. I know that guy. It's not my friends.

6 **Q.** Good.

7 **A.** Okay.

8 **Q.** So he was talking about Manny. And what was the other
9 name?

10 **A.** His wife's girlfriend.

11 **Q.** And what was her name?

12 **A.** Another lady, Gricelda.

13 **Q.** Gricelda?

14 **A.** Gricelda.

15 **Q.** And did you know who these people were?

16 **A.** These guys is not my friends, but I know the guys. They
17 have some kind of level.

18 **Q.** When you say they have some kind of level, what do you
19 mean?

20 **A.** They move, they move drugs. It's not like dealing in the
21 street with junk. No.

22 **Q.** Kind of high-level drug dealers?

23 **A.** Yes.

24 **Q.** What kind of drugs?

25 **A.** My understanding -- when I know the guys --

1 **MS. CAFFESE:** I'm going to object. Unless he's
2 speaking from personal knowledge, Judge, objection.

3 **THE COURT:** Sustained.

4 **BY MR. HEMANN:**

5 **Q.** Do you know what kind of drugs Manny and Gricelda were
6 moving?

7 **A.** When -- in the beginning they move heroin. But then I --
8 I don't know that his business. I know that deal drugs. I
9 know them.

10 **Q.** So what did Mr. Robles ask you about Manny?

11 **A.** In that moment I tell him a little bit about my life in
12 the past. So he know I have friends like him. And he say,
13 see, you have to give me friends like Manny because we can make
14 a lot of money. And then you know how much money I make on
15 this guy?

16 And all the -- he's happy, excited talk to me about these
17 guys. Like you walk in the street and find money, you happy.
18 That's this guy. I want you have to give to me people like
19 Manny so that way we can make a lot of money.

20 He say, You know how much money I make on that? I say,
21 How much? And he say, A lot. A lot. He always say that.

22 **Q.** Let me step back for a moment. You walked into the room?

23 **A.** Yeah.

24 **Q.** And how did this conversation start? Did he tell you
25 about something?

1 **A.** They tell me if I know them. They asked me. And they
2 used to ask me about these guys, way they look and everything.
3 And I know them. I know who's dealing, you know, who's the
4 guys. So I tell, yeah, I know them. Yeah, we arrested.

5 **Q.** Stop you.

6 So he told you that they had arrested Manny?

7 **A.** They don't give me details. Most of the conversation was
8 he wanted people like him.

9 **Q.** People like Manny?

10 **A.** Like Manny. He say, Your friends in Redwood City, I want
11 that guy. I want that kind of money. I want that kind of
12 thing.

13 **Q.** So what did you say?

14 **A.** I don't remember. Nothing. I just like no -- I never
15 turn my friends.

16 **Q.** You never turned in your friends?

17 **A.** My friends, no.

18 People I meet in the street. Little dope dealers, like
19 *El Pareja*. This is normal for this guy. I know him.

20 I never turn my people from my country, the guys working
21 there in 2000, from my town in Mexico, Michoacan.

22 I turn people that I know here, here in the United States.
23 Never my friends.

24 And Manny is one of my country, is one that come from my
25 city.

1 Q. So when Mr. Robles said to you, "I want you to give me
2 somebody like Manny," did you understand what he was talking
3 about?

4 A. Yeah. He talking about high-quality drug dealers. Only
5 give to him people like deal in 20s, 40s. I think the only big
6 one was *El Pareja*. And then we made one case with the D.A. but
7 that I got working. But that was later.

8 Q. And the day that you met Mr. Robles in that conference
9 room --

10 A. Yeah.

11 Q. -- can you describe what his mood was, what his demeanor
12 was.

13 A. Happy.

14 Q. How do you know that?

15 A. I know him at that time. I'm talking with him more. I
16 know when he's mad, when he's happy.

17 He was happy. He was like, I want people like him. And
18 he told me. "I make a lot of money, a lot of money. Know how
19 much money I make? I make a lot."

20 At one point -- at one point Mr. Vargas --

21 Q. Was Mr. Vargas in the room --

22 A. Yes.

23 Q. -- during this conversation with Mr. Robles?

24 A. Yes. Both were there.

25 Q. Okay. Was Mr. Furminger present during this discussion?

1 **A.** No, sir.

2 **Q.** Do you recall an incident --

3 **A.** Mr. Furminger is the sergeant; right?

4 **Q.** The sergeant. I'm sorry. Was the sergeant present?

5 **A.** No.

6 **MR. GETZ:** I would like the record to reflect the
7 witness asked if Mr. Furminger was the sergeant.

8 **MR. HEMANN:** I think that's what he said.

9 **THE COURT:** I think that's what he said.

10 **BY MR. HEMANN:**

11 **Q.** And just to be clear, you knew somebody at Mission Station
12 who was the sergeant, correct?

13 **A.** Yes.

14 **Q.** Is that the man sitting in the courtroom here?

15 **A.** Yes. They call him Sergeant all the time. They don't
16 call him Furminger. They never say Furminger. They say
17 Sergeant. Sergeant.

18 **Q.** Do you remember an incident involving an individual by the
19 name of Duanes?

20 **A.** Carlos Duanes, yes.

21 **Q.** Did he have a nickname?

22 **A.** El Moreno.

23 **Q.** El Moreno?

24 **A.** Yeah.

25 **Q.** And how do you know who Carlos Duanes or El Moreno is?

1 **A.** I meet him in jail before I go to prison. He always talk
2 to me. Because I come to jail when -- my case was so big, my
3 case was 200 pieces of heroin and one million bail.

4 **Q.** This is the time you went to San Quentin?

5 **A.** Yes.

6 **Q.** And you meant Mr. Duanes in San Quentin?

7 **A.** Yes. He know my case. I tell him about my case and my
8 paperwork and everything. So he knows I know peoples. He tell
9 me when you get out from prison we can work. And I be like,
10 all right.

11 **Q.** Did you stay in touch with Mr. Duanes after you got out of
12 prison?

13 **A.** Yes. When I leave from prison, my wife tell me a person
14 called few days ago and left this number for you. Because I
15 gave him my beeper number.

16 **Q.** That's back in the early 2000s; right?

17 **A.** Yes, 1999.

18 **Q.** Did Mr. Duanes come up again in -- with Mr. Robles and
19 Mr. Vargas?

20 **A.** Yes. In that 2000 -- when I meet, yes.

21 **Q.** In 2009?

22 **A.** Yes, something.

23 **Q.** How did Mr. Duanes come up during that time?

24 **A.** One day I tell him about him.

25 **Q.** You told who about who?

1 **A.** Mr. Robles.

2 **Q.** About?

3 **A.** Carlos Duanes.

4 **Q.** What did you tell Mr. Robles --

5 **A.** I tell --

6 **Q.** Slow down just a little bit. It's okay.

7 What did you tell Mr. Robles about Mr. Duanes?

8 **A.** I tell him dealing a lot of heroin in the Tenderloin.

9 **Q.** In the Tenderloin?

10 **A.** Yes.

11 **Q.** Why did you tell Mr. Robles about Mr. Duanes.

12 **A.** Give a tip.

13 **Q.** Pardon me?

14 **A.** I give a tip to him.

15 **Q.** You gave a tip to Mr. Robles?

16 **A.** Yeah. That day that we talking I'm -- I'm hundred percent
17 sure was that day was Mr. Jake -- another -- I give the names?
18 Was another police officer name Jake. And Ricky Guerrero. I
19 believe that was that day over there. So we start talking
20 about Carlos Duanes.

21 And then Mr. Jake was interest in the name. Oh, who is
22 the -- he come to the conversation that we have.

23 **Q.** And were you sitting in that little room at Mission
24 Station?

25 **A.** Yeah, that little room. And they talk -- I talk to them,

1 but the guys was over there.

2 And they say, oh, we know that guy. We always want to
3 catch this. And they start talking about background on him.
4 And I say, yeah, I talk to him.

5 And they tell me one story. They hit one house when the
6 lady there. They told me, oh, we hit this house one day
7 looking for a kilo, but we never find it. And I say, you know
8 what? That was my wife. They hit my house. I was in Atlanta.

9 Q. That was several years before?

10 A. Yes. They told me they looking for him.

11 Q. Did you discuss with Mr. Robles doing something --

12 A. Yes.

13 Q. -- with Mr. Duanes?

14 A. Yes.

15 Q. What did you talk about with Mr. Robles doing with
16 Mr. Duanes? What was the plan?

17 A. I told him he move a lot of heroin.

18 Q. Okay. And did you and Mr. Robles and Mr. Vargas come up
19 with a plan to hit Mr. Duanes?

20 A. When they talked these guys and tell who these guys are
21 they very interest. They say they have money and everything.

22 Q. Okay.

23 A. They digging holes.

24 Q. They're digging holes?

25 A. Him, Carlos Duanes. He don't put the money in the bank.

1 He don't put the money in the house. In the park he make
2 holes, and he put the money in the holes.

3 Q. In what park?

4 A. One of the Avenues. Golden Gate Park in the Avenues. We
5 go over there.

6 Q. Okay. So did you and Mr. Robles come up with a plan --

7 A. Yeah.

8 Q. -- to do something with Mr. Duanes?

9 A. Yes, to buy.

10 Q. What was the plan?

11 A. Told me buy some pieces of heroin.

12 Q. Pieces of heroin?

13 A. I say piece. I don't say ounce because the ounce come
14 28 grams. The heroin is different. When somebody want an
15 ounce we don't call it that. We call them piece. 25 grams.

16 Q. So the unit of measuring heroin is a piece, which is 25
17 ounces?

18 A. Yeah. You say I want --

19 Q. 25 grams.

20 THE COURT: I think it's 25 grams.

21 BY MR. HEMANN:

22 Q. 25 grams, yes.

23 A. Yeah, but the ounce is 28.

24 Q. So the plan was to get some pieces from Mr. Duanes?

25 A. Yes. Five pieces.

1 And I tell him, I going to give you the money in three,
2 four days.

3 Q. You told who?

4 A. I tell Duanes.

5 Q. Okay.

6 A. Because he say give all the money so that we can follow
7 him and see where the money is.

8 Q. Who said to give the money --

9 A. Vargas.

10 Q. So the plan was you buy -- you get some heroin from
11 Mr. Duanes and give him cash?

12 A. Yes.

13 Q. And then you follow Mr. Duanes to --

14 A. Not me. They going to follow.

15 Q. Mr. Robles follows?

16 A. Yeah.

17 Q. Okay. Did you do that?

18 A. Uhm -- uhm -- sorry. Sorry.

19 Q. Did you do that?

20 A. Yes. The problem was one day before I sell four pieces,
21 two halves left. One day before I had to give the money to
22 Duanes. I come in the Monday before and tell them I don't have
23 no customers. I have to give you the money tomorrow.

24 Q. You went and told who that?

25 A. Mr. Robles.

1 Q. Okay.

2 A. And he told me don't worry about it. He had somebody they
3 going to buy the thing. And I give it to him, two halves.

4 Q. You gave what to him?

5 A. Two halves of heroin.

6 Q. Two half pieces.

7 A. Half pieces.

8 Q. Okay.

9 A. 12.5 each.

10 Q. Okay.

11 A. Next day when I come to the police station he only have
12 one half money.

13 Q. How much was that?

14 A. I think I tell him \$200.

15 Q. Okay.

16 A. Yeah, I believe so. But they don't have all of it. They
17 only had the money for half. So they call the guy -- he called
18 somebody but the guy don't answer. And he tell Vargas, oh, he
19 don't answer the phone. They told me the guy that gave me the
20 other half he don't answer the phone?

21 Then I start being worried. What I do now? I have to pay
22 Duanes, you know. And it was like don't worry, dude, we got
23 you.

24 Q. Who said, "Don't worry, Dude"?

25 A. Robles. Don't worry, I got you.

1 And I ask Vargas. He put hundred dollars, and he put
2 hundred dollars. And I had to sign paper. And they give me
3 hundred dollars each and sign the paper.

4 **Q.** So you sold four pieces yourself?

5 **A.** Yes.

6 **Q.** You got money from Mr. Robles for half a piece?

7 **A.** Yes.

8 **Q.** And you didn't have to sign for that?

9 **A.** No.

10 **Q.** And then you got money from Mr. Robles and Mr. Vargas, and
11 you had to sign for that?

12 **A.** Yes.

13 **Q.** So how much money did you have to give Mr. Duanes then?

14 **A.** The money that covered the five pieces.

15 **Q.** And about how much money was that?

16 **A.** I think -- I think Vargas's gave me the piece, 350. But I
17 tell them I do 400. It's the way that sell on the street.

18 It's the way they sell on the street. So I said hundred, 200
19 the half.

20 **Q.** So did you ultimately give money to Mr. Duanes?

21 **A.** Yes, sir.

22 **Q.** Where did you give it to him?

23 **A.** I give it to him somewhere in the Tenderloin.

24 **Q.** How much did you give him, do you think?

25 **A.** I give everything, all the money, yes.

1 Q. And did you tell Mr. Robles and Mr. Vargas that you had
2 given him the money?

3 A. Yes. I'm -- I understand they follow him.

4 Q. They followed him?

5 A. Yeah, what I understand.

6 Q. Who told you that?

7 A. Robles. Because later we go to the park.

8 Q. That day you went to the park?

9 A. Yeah. They pick me up and go to the park.

10 Q. And when he picked you up, who picked you up?

11 A. Robles and Vargas.

12 Q. And when they picked you up what did they tell you?

13 A. They say we know where this guy's walking into the park.

14 Q. And did you go to the park with Mr. Robles and Mr. Vargas?

15 A. Yes.

16 Q. Why did you go to the park with them?

17 A. Digging holes. We, we -- they told -- he told me he
18 follow him. At one point he look back and they walking around.
19 I don't know. But they don't see.

20 But we go where was the area. We dig holes, like holes,
21 holes, holes, digging holes. Holes. We looking around in the
22 ground, the earth and, like, we digging.

23 Q. And you did this when the earth is, like, loose?

24 A. Yes. Yes, we digging everywhere.

25 Q. And did you find anything out --

1 **A.** No, we don't find nothing. The park is so big.

2 **Q.** Say again.

3 **A.** The park is so big. We can't.

4 **Q.** So I want to talk, for a little while, Mr. Hernandez,
5 about how you came to be a witness in this trial, okay.

6 **A.** Okay.

7 **Q.** All right. Now, you said earlier that you -- after
8 Mr. Robles left to go to motorcycles you did some deals with
9 Mr. Vargas too; correct?

10 **A.** Correct, yes.

11 **Q.** And did you eventually stop doing deals with Mr. Vargas?

12 **A.** We don't stop deals. Vargas is -- is more personal. He's
13 more like, uhm, more humility more -- I don't know what word is
14 in English. More -- you be more comfortable with him. He's
15 like more person. He have feelings.

16 **Q.** Okay.

17 **A.** And most of the time he told me I have to do my life, you
18 know, continue my life. We don't have to do that if I don't
19 want to.

20 **Q.** So when you started doing -- when you were doing deals
21 with Mr. Robles, who was calling who to set up the deals, to
22 try to get the deals? Were you calling him, or was he calling
23 you?

24 **A.** In the beginning they -- they call me. I call them some.
25 The first one they call me.

1 Q. With Mr. Vargas was it different?

2 A. In the beginning Robles called me every time, every time
3 Hey dude, what's up? What's up? What's up? You know, like he
4 push me to do. Vargas, no. Vargas -- if I don't call him, he
5 don't call me back. Robles buy me a phone. He buy the phone
6 and pay the bill, Mr. Robles.

7 Q. So, eventually, with Mr. Vargas did you stop calling him
8 with deals?

9 A. Yes. We -- we still talking but no most of the time about
10 deals. Yeah, we -- we do couple more. Like two years, last
11 two years, we do like 10 deals, 12 deals.

12 Q. When you stopped calling him where were you living?

13 A. When I stop calling or Mr. --

14 Q. After you were dealing with Mr. Vargas for a while, and
15 then you stopped calling him, where were you living when it,
16 sort of, ended?

17 A. In the end?

18 Q. Yeah.

19 A. Lived in the shelter.

20 Q. You lived in the shelter?

21 A. Sometimes. Sometimes in the hotels.

22 Q. And where was the shelter that you lived?

23 A. Fifth and Mission.

24 Q. Fifth and Mission?

25 A. Yeah.

1 Q. Did you end up getting a job, like a regular job?

2 A. Yeah. I working for *Examiner* newspaper.

3 Q. The *Examiner* newspaper?

4 A. And I working in -- one guy have a newsstand. They sell
5 magazines. I work for him too. Two jobs.

6 Q. Where was the newsstand?

7 A. Second and Market, I think. Yes, I believe so. Second
8 and Market.

9 Q. So you started doing that after you stopped doing things
10 with Mr. Vargas?

11 A. We don't stop. We still in contact, but with no pressure.
12 Like if I know somebody.

13 Q. Okay.

14 A. He still call me. And I help him to move one day.

15 Q. You helped him move his house?

16 A. His girlfriend's. I helped to move to another house. Was
17 very different.

18 Q. Very different?

19 A. Nice person. Very different. He told me go to work,
20 forget these things. You better than that. Do some work.

21 And he's -- I don't know, very -- good person. Bad person
22 can do bad things. But very different than the first officer.

23 Q. At one point in time did you find out that the police were
24 looking for you about this?

25 A. Yes.

1 Q. How did you first find out?

2 A. That same one, Carlos, I working -- I working over there.
3 And then I walk in the Mission, in the Tenderloin. And he told
4 me the police going to my house. And then my wife come to the
5 place I work and tell me somebody coming looking for me.

6 Q. Where was the place that you worked at the time?

7 A. Second and Market in the newsstand.

8 Q. And what did you do when you found out that the police
9 were looking --

10 A. I go to the police --

11 Q. -- for you -- Let me finish.

12 A. Okay.

13 Q. What did you do when you found out the police were looking
14 for you?

15 A. I don't know why, so I go to the police station and asking
16 for Vargas. A police officer in the -- in the window when you
17 come and ask for peoples or file complaint or whatever. He
18 know me. So he say, oh, he's not here today. And I say,
19 well -- so I tell him why I'm there. I say, I'm here because
20 the police looking for me and I don't know what I do. I don't
21 do nothing, but the police looking for me.

22 And he told me like, you know what, call the guys -- I
23 mean, narcotics, call the guys for us. Because if I look in
24 the computer and I'm find you do something I have to go over
25 there and put the handcuffs, and probably going to be hard for

1 them to take you out. So go looking for them.

2 Q. So you left?

3 A. And I left. Yeah, I walk away from that.

4 Q. Did you call Mr. Vargas?

5 A. Yeah, I call Mr. Vargas.

6 Q. What did Mr. Vargas tell you?

7 A. He said, oh, you know what, it's not for you. It's for we
8 do in the past, the money and all those things. He said it's
9 not for me. He said they looking for me. The problem is for
10 me, for us, all that we do in the past. Okay. And easy
11 conversation.

12 Q. At some point in time did the police track you down to
13 talk to you?

14 A. Yes.

15 Q. Who found you?

16 A. They found me, yes.

17 Q. Who?

18 A. One police officer. The name Al Duarte. That moment I
19 know him he told me his name is Al.

20 Q. Al?

21 A. Yes.

22 Q. And did Mr. Duarte ask you to talk to him?

23 A. Yeah. He told me to talk to if I'm a witnesses. They
24 explain to me, little bit, what happened. They told me if I
25 working for some guys in the police station. And I say yes.

1 We want to talk to you about that. In the beginning not
2 too comfortable.

3 **Q.** Where were you living at this time?

4 **A.** Shelter.

5 **Q.** Shelter?

6 **A.** Fifth and Market, yes.

7 **Q.** Okay. Eventually, did you go talk to Mr. Duarte and his
8 colleagues?

9 **A.** That same day. They come in the morning. And then I tell
10 him, well, I can't go nowhere. I working. If you want me talk
11 to you I talk to you, but when I'm -- when I'm finished work.
12 And he say okay.

13 And then I'm close -- because I had to close the little
14 stand. So I closing the stand. They come in, walking to me.
15 He say, You ready? I say, Yeah, I'm ready.

16 **Q.** Did you go with them?

17 **A.** Yeah.

18 **Q.** Where did they take you?

19 **A.** They take me to -- you know the Dugout place?

20 **Q.** The Giants?

21 **A.** Yeah, the Giants.

22 **Q.** Baseball park?

23 **A.** Yes. Close to over there in the beach. Something over
24 there. I don't know the area.

25 **Q.** Was there an office there?

1 **A.** There's a little building. Yes, an office there.

2 **Q.** And did you talk to Mr. Duarte?

3 **A.** Yes.

4 **Q.** Were there people from the FBI there too?

5 **A.** Yes. Mr. Greg Nestor, Mr. Joe -- I see Mr. Joe somewhere.
6 Right there.

7 And then what else? Mr. Joe. Mr. Greg. What's another
8 person? I don't remembering. Mr. Eton. And then come
9 Mr. Caputo later.

10 **Q.** Is Mr. Caputo a prosecutor?

11 **A.** Yes.

12 **Q.** Okay. From my office?

13 **A.** Yes. And was a police -- field police officer, too, like
14 field officers San Francisco Police.

15 **Q.** So there were some FBI and some San Francisco police?

16 **A.** Yes, yes.

17 **Q.** And starting then -- I don't think we need to go into all
18 the details, but starting then did you start talking to people
19 at the San Francisco Police and the FBI about the things you're
20 telling about today?

21 **A.** Yes. They start talk to me about if I be informant for
22 these guys, if I work for these guys, give you tips. And I say
23 yes.

24 **Q.** Eventually, did these people include Ms. Flores from the
25 FBI?

1 **A.** Yes. Ms. Flores came a few days later.

2 **Q.** After you started meeting with them, did you get yourself
3 a lawyer?

4 **A.** Yes.

5 **Q.** How did you get a lawyer?

6 **A.** We were in court and --

7 **Q.** You went to court?

8 **A.** Not at this court. Some little private court.

9 **Q.** A small court in this building?

10 **A.** Yeah. Yes, this building.

11 **Q.** And did the Judge give you a lawyer?

12 **A.** Yeah, Mr. Guzman over there. Erick Guzman.

13 **Q.** So beginning at that time you are talking with the FBI.
14 You have a lawyer. Do you continue with your job?

15 **A.** They don't let me stay my job.

16 **Q.** Who won't let you stay in your job?

17 **A.** FBI.

18 **Q.** Why not?

19 **A.** For my safety. I want to stay in my job. I want to keep
20 my job. And we have a lot of arguments about that. One point
21 I had to quit my job.

22 **Q.** You had arguments?

23 **A.** Yeah, because I don't want to leave my job. I like my
24 job. I meet a lot of people. At that moment I think
25 everything going to come back like before, like I had to do

1 things for the police. Because I don't know what they really
2 want to do.

3 Robles had already left. Vargas let me go. So I wanted
4 my life change. I want to start working. I don't want no more
5 deals. Be somebody else.

6 **Q.** But they persuaded you to work with them for a while?

7 **A.** Yeah. They told me this is different. And then I see
8 it's different. It's not nothing for exchange money. It is
9 case.

10 **Q.** At some point in time did you move out of the shelter?

11 **A.** They move me. They told me this is not good place for me.
12 I had to move.

13 But because they told me what did we do? And I tell what
14 we did. In the beginning I just tell what did we do. We don't
15 make details, nothing.

16 And I think they have a little investigate about
17 everything I tell them. They investigate and make sure.

18 **Q.** Did you start getting some money for expenses?

19 **A.** When -- when I quit from my job.

20 **Q.** When you moved from the shelter?

21 **A.** Yes. Mr. Greg Nestor, one of the FBI agent, first time he
22 try give me money for my expenses and for my hotel. They have,
23 like, 300, \$400. One is for my hotel because they tell me you
24 have to quit your job. I say, all right, if I quit my job what
25 I going to eat? Where I going to live?

1 And he say, We're going to help you. FBI going to help
2 you with the hotels and with expenses.

3 He tried to give me money. I refused to accept the money.
4 I don't want the money from the police no more.

5 But they told me this case going to take forever. So I
6 refused. I don't accept the money. And in the beginning we
7 have a lot of arguments. And I don't -- I don't take the
8 money. I walk away.

9 Q. Eventually, did you start taking money for expenses?

10 A. Yes. Then I see this case what kind of -- I see that it's
11 different. They don't want like other guys.

12 Q. So what kind of -- what kind of hotel did you end up
13 staying in?

14 A. Cheaper hotel in Tenderloin.

15 Q. Same like you lived in, in the Mission before?

16 A. Yes.

17 Q. Okay.

18 A. That kind of hotel, yes.

19 Q. How much did you have to pay for that?

20 A. I believe it's 55 a day. Or \$60.

21 Q. And did the FBI cover those expenses?

22 A. Yes.

23 Q. And where was that first hotel?

24 A. In the Tenderloin.

25 Q. Did you also get some money for living -- for food, and

1 laundry, and things like that?

2 **A.** Yeah. They gave me money for food, laundry, and other
3 things. They give me some kind of money. I think it was 40
4 Monday to Saturday.

5 **Q.** Okay.

6 **A.** And 50 for the hotel. But only Monday -- Monday through
7 Saturday -- or Friday. I don't know. But they don't give me
8 for weekends.

9 **Q.** Okay.

10 **A.** They gave me for the weekend for hotel, but not for
11 expense.

12 **Q.** Okay.

13 **A.** Because up until then I working. And they tell me you
14 can't work. And one of the things they say I can't work, one,
15 for my safety. And second one I'm illegal. When that guy come
16 to me I'm illegal. I can't call no police. I'm scared.

17 **Q.** When Mr. Robles came to you?

18 **A.** Yes, when I agreed to cooperate first time.

19 **Q.** So you lived in a hotel in the Tenderloin for a while?

20 **A.** Few months. And at then they moved me.

21 **Q.** Do you understand why they moved you?

22 **A.** For my safety.

23 **Q.** And where did you move to?

24 **A.** Close to Chinatown, in the downtown -- near to Chinatown.

25 **Q.** Did you continue to receive some expense money for the

1 hotel and for food, and stuff, from the FBI?

2 **A.** Yes. I think every week they pay my hotel. Yeah, they
3 come every week. Not every day, every week.

4 **Q.** Now, you said that you were in the country illegally and
5 you couldn't work. Do you remember that?

6 **A.** Yes.

7 **Q.** Did you get some help from the FBI to allow you to work in
8 the United States?

9 **A.** Yeah. They move me to another state. And when they move
10 me to another state, yeah, they help me with that.

11 **Q.** So after the hotel in Chinatown did you eventually move to
12 another state?

13 **A.** Yes. They moved me to another state.

14 **Q.** The FBI moved you?

15 **A.** The FBI yes, sir.

16 **Q.** And at that point in time did you get some money for
17 living expenses when you went to the new state?

18 **A.** Yes, sir. I live in another hotel for two months because
19 I don't have my work authorization yet.

20 **Q.** At some point in time did you obtain, with the help of the
21 FBI, a work authorization to work in the other state?

22 **A.** Yes, sir.

23 **Q.** Okay. And did you look for a job and find the job?

24 **A.** When they give me the work authorization they say the help
25 the expense and other things they stop. They stop giving me

1 money because I already can work legally in the United States.

2 So, yes, for the last two years they give me -- they give

3 me the work authorization in August. I start work in

4 September. And for the last two years I'm -- I cover my --

5 they don't give me no more money. I'm working and I'm -- I buy

6 my own things with my own work.

7 **Q.** What kind of job did you get?

8 **A.** I work in the candy factory. Mix operator.

9 **Q.** And how much money did you make an hour at the candy
10 factory?

11 **A.** They pay me 13.48.

12 **Q.** Once you moved to the new state did you come back here on
13 occasion to talk --

14 **A.** One --

15 **Q.** Hold on. After you moved to the new state did you come
16 back to California on a couple of occasions to talk with the
17 FBI again?

18 **A.** Not for vacation. But, yes, I come to California to talk
19 with the FBI.

20 **MR. HEMANN:** What was the question?

21 **THE INTERPRETER:** He thought you said "vacation."
22 You said "occasion."

23 **BY MR. HEMANN:**

24 **Q.** Occasion. Not vacation.

25 **A.** I'm sorry. I thought you said vacation.

1 Q. Was it like a vacation?

2 (Laughter)

3 A. No.

4 Q. No, not like a vacation.

5 A. I'm sorry.

6 THE WITNESS: Thank you.

7 BY MR. HEMANN:

8 Q. Did you come back a couple of times to California to talk
9 about the case?

10 A. Yes, sir.

11 Q. And when you came back were your expenses paid by the FBI?

12 A. Yeah, they paid for the hotel and for the plane ticket.

13 MR. HEMANN: Now would be a good time, or 15 minutes
14 would be a good time.

15 THE COURT: How much more do you have?

16 MR. HEMANN: I would say I have about 30 minutes.

17 THE COURT: Okay. So let's do it now.

18 Ladies and gentlemen, we will be in recess until 20 to
19 3:00. Remember the admonition given to you. Don't discuss the
20 case, allow anyone to discuss it with you, form or express any
21 opinion.

22 Thank you. You can leave your binders here. Take your
23 books with you.

24 (Jury out at 2:17 p.m.)

25 THE COURT: Let the record reflect the jurors have

1 left.

2 Mr. Getz.

3 **MR. GETZ:** I would like to say something, if I could,
4 but outside the presence of the witness.

5 **THE COURT:** Mr. Hernandez, could you step outside.
6 Thank you.

7 **MR. GETZ:** Your Honor, we did file a written pleading
8 requesting a limiting instruction. And the matters that the
9 witness has testified about are the same ones that were recited
10 in the pleading.

11 And thinking back on the pleading and listening to the
12 witness today, I think it's too thin to tie Furminger to
13 anything at all. There's not even any proof, nor could there
14 be, that he even heard what the witness was talking about.

15 **THE COURT:** That's correct. But I --

16 **MR. HEMANN:** May I?

17 **THE COURT:** Go ahead.

18 **MR. HEMANN:** Two observations.

19 **THE COURT:** Well --

20 **MR. HEMANN:** Number one is that Mr. Vargas is going
21 to sit there and testify that they split the money. I mean,
22 Mr. Vargas, believe it or not, will connect what Mr. Hernandez
23 is saying to Mr. Furminger.

24 **THE COURT:** What I would do is -- oh, I have no idea
25 what Mr. Vargas is going to say. But these statements, of all

1 these conversations, if, in fact, it is claimed that your
2 client knew about them or had some role with respect to them
3 would be statements in furtherance of a conspiracy.

4 In other words, it would be admissible against your
5 client. You don't have to charge a conspiracy. That's the
6 theory of admission.

7 So, you know, I think I will caution -- when this witness
8 is finished, I may caution the jury that in order to view this
9 evidence as admissible against your client there must be
10 evidence of a conspiracy or evidence of -- that your client
11 knew about it or participated in it in some manner.

12 **MR. HEMANN:** Your Honor, I guess, I object to that --

13 **THE COURT:** Am I not connecting?

14 **MR. HEMANN:** It would be great if we could have
15 Mr. Hernandez and Mr. Vargas switch off. And have Mr. Vargas
16 walk in immediately after Mr. Hernandez says something and say,
17 yeah, that's this deal that Mr. Furminger knew about.

18 But we can't do that. And there will be a little -- I
19 know we're very eager to get to Mr. Furminger, but
20 Mr. Hernandez has something more specific about Mr. Furminger.

21 I've been as careful as I can be about saying, Was
22 Mr. Furminger there?

23 I feel like I'm giving, sort of, the limiting instruction
24 as I go, which is: Was he present? Was he not? And we're
25 trying to be careful about that.

1 **THE COURT:** Whether he's present or not is not the
2 guide of whether it's admissible.

3 **MR. HEMANN:** Agreed.

4 **THE COURT:** So I think I would just, you know, let it
5 in. And whether or not it's binding against Mr. Furminger
6 depends on how the evidence comes in.

7 So I don't know how -- the problem with a limiting
8 instruction is: Don't consider it against A; only consider it
9 against B.

10 And the issue, at this point, is we're not at the point to
11 see whether or not that's an appropriate instruction. It might
12 be.

13 And I could easily, easily -- if it's not connected in a
14 legal way I could easily give a curative instruction. I could
15 simply say to the jury: Remember when Mr. Hernandez testified?
16 He testified for a day or so about all of these events. I
17 instruct you that that evidence is not admissible as to
18 Sergeant Furminger."

19 I mean, it's easy enough to do if that's warranted by the
20 evidence finally. But it's a problem of order of testimony.
21 And that's why all the courts have said, repeatedly, that
22 provided that the government is acting in good faith, with
23 respect to how they believe it will be admissible, they can
24 introduce these statements subject to their proffer that they
25 will connect it up in an admissible way.

1 And then I can make that judgment. And depending on that
2 judgment, I'll rule. And then I'll -- whatever will flow from
3 that.

4 **MR. GETZ:** That's fine. Then I would ask the Court
5 to find that I'm not intending a waiver if I cross-examine this
6 witness.

7 **THE COURT:** You're not.

8 **MR. GETZ:** Thank you.

9 **THE COURT:** Absolutely.

10 Okay. Thank you.

11 **MR. HEMANN:** Thank you, Your Honor.

12 (Recess taken from 2:22 to 2:47 p.m.)

13 (The following proceedings were held in open court,
14 outside the presence and hearing of the jury.)

15 **THE CLERK:** You may remain seated.

16 Please rise for the jury.

17 (The following proceedings were held in the presence of
18 the Jury)

19 **THE COURT:** Okay, please be seated.

20 Let the Record reflect all the jurors are present; the
21 parties are present.

22 You may proceed.

23 **BY MR. HEMANN:**

24 **Q** Mr. Hernandez, can you move the microphone a little closer
25 to you again?

1 (Request complied with by the Witness)

2 **Q** There you go. We were talking before the break about the
3 FBI providing expenses for your living over the last several
4 years. Correct?

5 **A** Yes.

6 **Q** Do you know how much the FBI provided for your living
7 expenses since 2011?

8 **A** How much money they give me? Another time?

9 **Q** Yeah.

10 **A** Until now? I don't know, sir. But, I don't have no idea.
11 It's like, like, total -- total money they have?

12 **Q** Total.

13 **A** Like 30, maybe more than that.

14 **Q** 30,000?

15 **A** Yes.

16 **Q** And what did you use that money for, that the FBI
17 provided?

18 **A** Expenses and paid my rent, my utilities. Because I can't
19 work because I don't have any authorization, I can't work, I'm
20 illegal.

21 **Q** And you have been able to work since you received the work
22 authorization?

23 **A** For the last three years, I working by myself. They don't
24 -- stop help me. Soon I have the work, searching for work,
25 legally, in the United States.

1 Q At some point in time, did you enter into some kind of an
2 agreement with the government about charges against you?

3 A The FBI?

4 Q Yeah.

5 A Yes.

6 Q What kind of agreement did you have?

7 A They tell me if I speak the true and everything about this
8 case, I -- I can have -- I have immunity. When I working --
9 whatever I do with Mr. Robles, Mr. Vargas, I have to admit it.

10 And, they tell me I had to tell the true, and only that
11 true.

12 Q And did you negotiate that agreement with the assistance
13 of your attorney?

14 A With my lawyer?

15 Q Yes.

16 A Yes. He was present.

17 Q During the time that you were working with Mr. Robles, and
18 Mr. Vargas, was there a period of time that you took a break
19 and moved out of San Francisco?

20 A Repeat.

21 Q During the time that you were working for Mr. Robles and
22 Mr. Vargas as an informant --

23 A Yes.

24 Q -- was there a time that you took a break and moved out of
25 San Francisco?

1 **A** Yes. For -- yes, for a few months.

2 **Q** Why did you do that?

3 **A** At that time I'm working -- well, Robles and Vargas were
4 over there but I just respond to Mr. Robles, I work for him.
5 He push me too much, he ask me too much. So, I want to walk
6 away a little bit.

7 **Q** So where did you go?

8 **A** First I go to Palo Alto, one of my friends. And, a few
9 days. And then I meet -- I know this guy, the name, some guy,
10 work in the Mission. He -- he tell me he live in an apartment
11 with another guys, but they don't pay their rent, so they are
12 in court. They don't pay no rent.

13 They tell me, "You want to live with us? It's free rent
14 for two or three months."

15 **Q** Where's that?

16 **A** The Excelsior District.

17 **Q** The Excelsior District, in San Francisco?

18 **A** Yes.

19 **Q** So did you live there for a few months?

20 **A** Yeah, for two or three months, I live, stay over there.

21 **Q** And when that deal ran out, did you --

22 **A** Yeah, he told me -- okay.

23 **Q** When the deal ran out, did you move back to the Mission?

24 **A** Yes.

25 **Q** And, when you moved back to the Mission, did you start

1 doing things with Mr. Robles and Mr. Vargas again?

2 **A** I'm back to do little things, like sell fake IDs or -- the
3 things I do before.

4 **Q** And did you start communicating with Mr. Robles and
5 Mr. Vargas again?

6 **A** Yes. One day I find them and I'm -- they always in my
7 same area, so, maybe next day, or very, very close, I'll find,
8 and he say, "Come to the office, I want to talk to you."

9 And I come to the office.

10 **Q** Now, did you have a telephone? You mentioned earlier, you
11 had a telephone?

12 **A** Yeah. Mr. Robles buy me one telephone. At that point.
13 And he say we --

14 **Q** And was the telephone in your name?

15 **A** In my last name only.

16 **Q** And do you remember what the first name was?

17 **A** Now, I know it was "Eric Hernandez." But I don't know at
18 that time. I never pay bills; he only buy phone. He -- he --
19 okay.

20 **MR. HEMANN:** Your Honor, I'm going to -- discussed
21 this with Counsel.

22 I'm going to show Mr. Hernandez a document that we are not
23 going to offer into evidence, at this point in time. He's just
24 going to identify one thing on the document, subject to
25 connecting it up later.

1 **THE COURT:** Okay.

2 **MR. HEMANN:** May I approach?

3 **THE COURT:** Yeah. Is the document numbered?

4 **MR. HEMANN:** It is. I'm about to read it. It's
5 Government Exhibit No. 293. It is not on the Court's exhibit
6 list.

7 May I approach, Your Honor?

8 **THE COURT:** Yes.

9 **BY MR. HEMANN:**

10 **Q** There are some names and some telephone numbers on that
11 document, Mr. Hernandez. Do you see those?

12 (Witness examines document)

13 **A** I think this is the phone number that he have --

14 **Q** Let me ask the question.

15 **A** Okay.

16 **Q** Do you see the numbers and the name?

17 **A** Yeah.

18 **Q** Do you see on that document the telephone number for the
19 phone that Mr. Robles gave you?

20 **A** I think that one is another area. Different.

21 **Q** Can you read the number that you recognize?

22 **A** From Mr. Robles, 925 --

23 **Q** No, no, no. The number for the phone that he gave you.

24 **A** Oh, it is (415) 240-8767. And that's, by "Name,"
25 "Hernandez, Eric."

1 Q Say it again?

2 A "Hernandez, Eric."

3 Q And is that the name that Mr. Robles registered the phone
4 in for you?

5 A Yes --

6 MS. CAFFESE: Objection. That calls for speculation.

7 MR. HEMANN: Let me rephrase the question,
8 Your Honor.

9 BY MR. HEMANN:

10 Q Do you know whether that is the name that Mr. Robles used
11 to register the phone for you?

12 A Yes --

13 MS. CAFFESE: Well, objection. Lack of foundation.
14 Personal knowledge.

15 THE COURT: You have to lay a foundation.

16 BY MR. HEMANN:

17 Q Did Mr. Robles discuss with you the telephone? Did he
18 talk to you about the telephone?

19 A At that time frame --

20 Q Just, answer the question, slowly:

21 Did Mr. Robles talk to you about the telephone, when you
22 were working with him? Yes or no?

23 A Yes. When he buy me the phone, yes.

24 Q And did he tell you that he registered it under a name
25 other than your name?

1 **A** Yes. He gave me that paper, where he buy it, the --
2 (Indicating) -- a paper with my phone number and everything.
3 They -- Metro, MetroPCS.

4 **Q** He gave you a paper?

5 **A** Yes.

6 **Q** About the phone from MetroPCS?

7 **A** Yes.

8 **Q** And did that phone (sic) have your telephone number on it?

9 **A** Yes.

10 **Q** And did that paper have the name that it was registered
11 to?

12 **A** Yes.

13 **Q** And was it the name that is on that piece of paper -- Let
14 me say it again.

15 **A** Yes.

16 **Q** Is the name on Exhibit 293 the same name as the name on
17 the piece of paper from MetroPCS that Mr. Robles gave you?

18 **A** I say yes.

19 **Q** And what is that name?

20 **A** It's "Hernandez, Eric."

21 **Q** Thank you.

22 **A** Where did the name come from, "Eric"?

23 **MR. HEMANN:** Ms. Lane, could you please -- and this
24 will pertain, Your Honor to Tab 9 of the incident binder.

25 And Ms. Lane, could you put up Exhibit 273, please. I'm

1 sorry -- yeah, 273.

2 (Document displayed)

3 **BY MR. HEMANN:**

4 **Q** Could you look at the screen in front of you,
5 Mr. Hernandez?

6 Do you recognize that building?

7 **A** Yeah, this building, I'll give a tip to Mr. Robles about
8 one person -- it was two dope dealers in that building.

9 **Q** There was two what?

10 **A** Dope dealers.

11 **THE INTERPRETER:** Dope dealers.

12 **BY MR. HEMANN:**

13 **Q** So there were two dope dealers in that building?

14 **A** Yes.

15 **Q** And you gave a tip to Mr. Robles about the dope dealers in
16 this building?

17 **A** Yes, sir.

18 **Q** First of all, how did you know about the dope dealers in
19 that building?

20 **A** How they know, somebody introduced me to one of them.
21 Somebody introduced me to one of them. Then, when dealing with
22 him, one day I go looking for him.

23 **Q** "Him," the dope dealer?

24 **A** The first, the one I meet first, that his name was
25 Fernando. He don't was there. So another guy, he know me

1 because I go like two, three times. And, he told me if I
2 looking for Fernando to buy, and I said yes. "I got it too."
3 And he sell me to. We go to his room.

4 **Q** And so you bought some drugs from Fernando in his room in
5 this building?

6 **A** Yes. And the other guy that his friend, Fernando's
7 friend, told me he got to. Because the day they knock on the
8 door, Fernando was not there. But when they knock on the door,
9 somebody next to there opened the door.

10 And I know that guys because one day I go to go play --
11 the Broadway, you go that way (Indicating), it's football.
12 It's a park. I go to play football with them a couple of
13 times.

14 **Q** In the park near their house?

15 **A** In the park, close to Broadway, you go all the way down,
16 there's a park. I don't know the address. I don't know.

17 **Q** So after you bought drugs in this apartment in this
18 picture, did you go back and talk to Mr. Robles about it?

19 **A** Yes, sir.

20 **Q** What did you tell Mr. Robles?

21 **A** I tell him, I'm -- I have a house, a building with two
22 different dope dealers.

23 **Q** Okay. And did you describe for him what the dope dealers
24 were doing in the building?

25 **A** Yes.

1 Q And what did you tell him about the -- about where the
2 dope dealers were living?

3 A Yes, I tell -- and, that moment, I know where his
4 apartment and everything, so I tell him. We do one buy, one
5 day before.

6 Q And when you say "We did one buy," who are you talking
7 about?

8 A Me, Robles and Mr. Vargas.

9 Q And when you said "We did one buy," what does that mean?

10 A I go to buy.

11 Q Okay.

12 A For them.

13 Q Did they go with you?

14 A Yes. They -- they -- they wait. They drove me, and wait
15 for me, I don't know where.

16 Q And they drove you in what car that day?

17 A The first day, the first time they do the buy, I don't
18 know. I don't remember. Was a police car. They drive three
19 cars. They got one from Buick; one, like, Ford car; and one
20 green one. I don't remember what car we had that day, but what
21 -- most of the times in the blue.

22 Q A Buick?

23 A The -- in the blue, or in the green Buick. This is the
24 only cars that we go to buys.

25 Q So there were three cars?

1 **A** Yes.

2 **Q** And they were --

3 **A** No, no, one car only.

4 **Q** Say again?

5 **A** They drive three different cars.

6 **Q** Okay. So the group drove three different cars?

7 **A** Yes.

8 **Q** Okay.

9 **A** But --

10 **Q** On that day you only drove one car?

11 **A** Yes. Probably the gray one, I don't remember at this

12 minute.

13 **Q** So you go over there?

14 **A** Yes.

15 **Q** How did you get the money to do the buy on that occasion?

16 **A** They gave it to me.

17 **Q** Did you go in and make a buy?

18 **A** Yes.

19 **Q** What did you buy?

20 **A** I think I buy two twenties.

21 **Q** Of?

22 **A** Cocaine.

23 **Q** And did you come back and give the drugs to --

24 **A** Yes.

25 **Q** Did you come back and give the drugs to Mr. Vargas and

1 Mr. Robles?

2 **A** I give to Mr. Robles, but Vargas was there.

3 **Q** After that day when you did the buy at this address, did
4 you go back there with Mr. Robles and Mr. Vargas?

5 **A** They told me they going to hit the house next day. They
6 want -- he told me I had -- "I go to pick you up because we
7 want to make sure, tell us the correct house and everything.
8 Exactly everything."

9 So, --

10 **Q** What time did they -- did they pick you up the next day?

11 **A** Yeah. I live -- very early. 7:00, 7:30. Very early in
12 the morning. I live at Fifth and Market -- and Bryant, Fifth
13 and Bryant. And they picked me up, Mr. Robles come in another
14 car. He always ride a motorcycle, but that day he come in the
15 van, picked me up. Fifth and Harrison. Very early in the
16 morning.

17 **Q** What kind of car were they driving when they picked you up
18 that day?

19 **A** He picked me up in the van. In the van.

20 **Q** The van?

21 **A** Yeah. Van.

22 **Q** And where did you go when he picked you up?

23 **A** We go to the police station.

24 **Q** And then, was it just you and Mr. Robles driving to the
25 police station?

1 **A** Yes. Vargas was already there.

2 **Q** And when you got the police station, what did you do that
3 day?

4 **A** They told me, we going to the house. The house
5 (Indicating).

6 **Q** And did you drive in the van over to the house?

7 **A** No. We drive in one truck that I never see. Gold color,
8 Chevy.

9 **Q** Chevy?

10 **A** Chevy truck.

11 **Q** Would you recognize the car if you saw it now?

12 **A** Yeah, if you show me, I can --

13 **MR. HEMANN:** Your Honor, may I approach the witness
14 with Exhibit 181?

15 **THE COURT:** 181.

16 (Witness examines document)

17 **BY MR. HEMANN:**

18 **Q** Do you recognize that vehicle, Mr. Hernandez?

19 (Witness examines document)

20 **A** The truck was a Chevy gold color. I don't see color here,
21 but yes, Chevy.

22 **Q** Was that the vehicle that you drove over to 519 Broadway
23 with that day?

24 (Witness examines item)

25 **A** I can't say it was this, but it was one truck exactly like

1 this.

2 **Q** It looked exactly like that.

3 **A** Yeah.

4 **THE COURT:** Admitted.

5 **MR. HEMANN:** Thank you, Your Honor.

6 (Trial Exhibit 181 received in evidence)

7 **BY MR. HEMANN:**

8 **Q** And at the time -- at that time -- not now, at that time,
9 did you know whose truck that was?

10 **A** No. I ask, ask him.

11 **Q** You asked who?

12 **A** Asked Mr. Robles.

13 **Q** And what did Mr. Robles tell you about whose truck it was?

14 **A** Because I know Mr. Vargas have a BMW, and Mr. Robles have
15 a motorcycle, and that they have the van. So I never see that
16 truck. And I'm asking, "Who's this truck?"

17 And he's like, "Oh, this truck belong to the sergeant."

18 Mr. Robles told me, that truck belonged to the sergeant.

19 **Q** And did you ask them why you were using that truck rather
20 than one of the usual police vehicles?

21 **A** Yes.

22 **Q** What did they say?

23 **A** They never -- when they go to hit the house, they never
24 take me. They -- they go, they do his job. They have -- that
25 day, they take me to the house. And, they tell me, we -- "I

1 want you guys, you go with us."

2 And I say, "Where you go?"

3 He say, "I go to that guy's house right now."

4 And I asking him why we don't go in -- why we went in this
5 truck. And Mr. Robles told me, "Because we don't want to
6 arrest nobody, we going to robber these motherfuckers." Say
7 exactly like that.

8 And -- okay. That's cool. I'm stay in the truck. I
9 don't go to the house. I'm staying -- they walk to the house.
10 I'm staying in there.

11 **Q** You drove --

12 (Reporter interruption)

13 **MR. HEMANN:** Let me ask a better question.

14 **BY MR. HEMANN:**

15 **Q** Did you drive to this address on Broadway with them, then?

16 **A** Yeah. In the front of the house it's the public parking,
17 a parking lot, public parking lot.

18 We come to the house, they drive all the way to the end
19 (Indicating) in the corner, in the end. I sit in the back and
20 I'm -- and they start walking (Indicating).

21 **Q** Did the truck have a front seat and back seat?

22 **A** Yes.

23 **Q** Where were you sitting?

24 **A** In the back seat.

25 **Q** Okay.

1 **A** They parking that way (Indicating). Face -- so I had to
2 turn my head to see what happened (Indicating).

3 I'm looking everything (Indicating), and, but, one guy
4 that clean, that work in the parking lot, the guy with the big
5 moustache, he was around, cleaning. Was in the morning, was in
6 the morning.

7 So I lay down. Sometimes I'm looking. One time when I'm
8 looking, I see Mr. Robles climb on the steps.

9 **MR. HEMANN:** Could you put, Ms. Lane, Exhibit 273
10 back on, please.

11 **BY MR. HEMANN:**

12 **Q** So you were across the street, in the back seat of the
13 truck?

14 **A** Yeah.

15 (Document displayed)

16 **Q** And were you looking at this building?

17 **A** Yes. He's climbing that. And I know it was Mr. Robles
18 because he always use the Hawaiian tee shirts, Hawaiian.

19 **Q** He would wear Hawaiian shirts?

20 **A** Correct. Most of the time, Hawaiian.

21 **Q** Did you see Mr. Robles in one of the windows of this
22 building?

23 **A** I seen Mr. Vargas climbing that step.

24 **Q** You mean Mr. Vargas or Mister --

25 **A** I'm sorry. Mr. Robles. Because he had the Hawaiian tee

1 shirt. I'm just looking, come back. That guy is one person
2 that cleaned that parking lot. So I just look a little
3 (Indicating), come back.

4 **Q** Did Mr. Vargas and Mr. Robles come back out of this
5 building after they went in?

6 **A** Might -- maybe 20, maybe half hour, 20 minutes. I don't
7 know, watch the clock. I just --

8 **Q** When they come back in -- did they get back in the truck?

9 **A** Yes, they come back to the truck.

10 **Q** And when they got back in the truck, what did they tell
11 you?

12 **A** When they come back in the truck, they talking about
13 something. And Mr. Robles give me -- you know the little
14 Mentos, the little --

15 **Q** Mints?

16 **A** Like *sardinas*, little cans.

17 **Q** Little can, for mints?

18 **A** Maybe for mints, look like, look like for mints. They
19 give it to me, and close -- a little container.

20 **Q** Okay. Metal container?

21 **A** Look like that one container, I call it, look like that.
22 I don't remember exactly, but it was a little container like
23 that. Just -- (Indicating)

24 **Q** Where were you sitting?

25 **A** I sit in the back. He come and give it to me. A little

1 container. The metal one.

2 Q And, did you look in the metal container?

3 A Yeah, I open it.

4 Q What's in the metal container?

5 A A lot of twenties.

6 Q A lot of twenties?

7 A Twenties -- little bags that cost \$20, in drugs. Twenty
8 dollars.

9 Q Little bags of what?

10 A Cocaine. I know it is twenties, a lot of twenties.

11 Q Did you talk to Mr. Robles about what he just gave you?

12 A Yes, we come back to -- because that, that truck, nobody
13 knows I'm sitting, like, talk to them. And we started talking
14 about -- they start talking about what happened, but --

15 Q And what did Mr. Robles tell you about what happened?

16 A They said they find that drugs, like, like -- like I tell
17 them.

18 And, at one point I tell him if -- I tell him, "So I have
19 this, and how about money?"

20 And he is like, "You motherfucker, you have all that
21 thing, you got to sell that and give me half." I don't give
22 him that.

23 Q Did you go sell it?

24 A Yes, but I don't give the money. I keep it. Because he
25 don't need no cash.

1 Q So you kept the money; and you said you did not share it
2 with Mr. Robles?

3 A No, because next day, what I understand, they only hit one
4 house. They don't go to the other guy. Or the other guy was
5 not there; I don't know.

6 Q So, is that what they told you?

7 A Yes.

8 Q Okay.

9 A And next day, I meet the guy, the guy they are looking
10 for, Fernando, because he working in one restaurant. And I
11 meet him in the street.

12 Q Stop for a minute.

13 A Okay.

14 Q Go slow on this.

15 A Okay.

16 Q Did you talk to Mr. Fernando?

17 A Yes.

18 Q Okay. Did you talk -- don't say what he said. Did you
19 talk to him about what happened?

20 A Yes.

21 Q Okay. After you spoke to Mr. Fernando, did you go back
22 and talk to Mr. Robles again?

23 A Yes.

24 Q Did you talk to him about what Mr. Fernando said?

25 A Yes.

1 **Q** Okay. Now, tell us what Mr. Fernando said when you met
2 him.

3 **A** He say they --

4 **MS. CAFFESE:** Excuse me, Judge; objection. Hearsay.

5 **MR. HEMANN:** Not offered for truth.

6 **THE COURT:** It is not offered for truth. In other
7 words, it's just -- it's a statement that you are to consider,
8 if you find the witness credible that it was actually made to
9 him. The statement was made to him. It doesn't mean that the
10 content of the statement is true. It just means that somebody
11 said X.

12 And, your determination would be: Did the witness -- is
13 the witness credible when he says that.

14 Okay. Go ahead.

15 **BY MR. HEMANN:**

16 **Q** What did Mr. Fernando say to you?

17 **A** Which, Fernando told me when these guys come to the house,
18 they find the drugs, and they find money. And they say it's
19 another -- another person from another apartment to stay that
20 night with them, talking with them in the apartment.

21 All these guys are from Yucatan, so all the guys I think
22 was friends.

23 **Q** From the Yucatan?

24 **A** Yes.

25 **Q** Okay.

1 **A** So, so he say they tell him, "Where do you live?"

2 And he say, "I live over there" (Indicating).

3 So take to his house, and they take money from that house
4 too. So, in that moment I be mad. That's why I don't give
5 half of the drugs.

6 **Q** Stop.

7 **A** Yeah.

8 **Q** So Mr. Fernando told you that money was taken?

9 **A** Huh?

10 **Q** Mr. Fernando told you that money was taken, too?

11 **A** Yes.

12 **Q** Did you go discuss that with Mr. Robles?

13 **A** Yes.

14 **Q** And what did Mister -- what did you say to Mr. Robles and
15 what did he say to you?

16 **A** He say he give me all the drugs.

17 **Q** Did he talk about the money?

18 **A** Yeah. He say, I don't want to have no cash. I have the
19 drug already. And, --

20 **Q** So he's not going to give you cash.

21 **A** No. Because he give me the drug. It was a lot of
22 twenties.

23 **Q** Did you have an argument with Mr. Robles about this?

24 **A** He very mad. He mad. I'm -- he's police officer, he mad,
25 I can -- I know -- I argue with him, but when I see he start,

1 like, be mad (Indicating), I stop.

2 **Q** After that 519 Broadway, did you talk to Mr. Robles and
3 Mr. Vargas about doing a larger robbery?

4 **A** Like I say in the beginning, when we start talking, he
5 always seemed to -- when I say my friends, I say, the dope
6 dealers that I know is people from my country. The one I grow
7 up, in Michoacán. These guys large, smoke a lot of cocaine.
8 We talk about kilos. Half kilos with them.

9 He want that kind of person. I don't give it to them. I
10 give it to them, peoples from the street. Peoples that deal in
11 grams. Peoples that I know came from 2007 when I come back.

12 **Q** So, did Mr. Robles identify a larger guy that he wanted
13 you to do?

14 **A** Yes. So he wanted that. So, the one time -- we talk a
15 lot, and one time we are talking about one guy that has a body
16 shop in Bayshore. He have a body shop, and he buy three, four
17 kilos at a time.

18 One of the guys that grow up with me in Mexico, in my
19 block, and my area when I was a kid, he delivered to him.

20 For any reason, we bring that conversation one day. And
21 he tell me, "Let's go get that guy."

22 I said, "No. I don't want my friend to go to jail." He
23 would eventually. But I don't want it for me, him.

24 **Q** Now, did you go over there and look at this guy's place?

25 **A** Yes, we go a couple of times.

1 Q What --

2 A Vargas and Robles. And they watch me when I go to the
3 body shop, and the guy give me a hug and everything.

4 Q And you knew him and they knew him to be a drug dealer?

5 A Yes, but I don't want my friend to go to jail.

6 Q Now, did you talk with them at some point about robbing
7 that guy?

8 A One day I'm watching the police station, and --

9 Q Stop for a minute. Were you sitting in that same room
10 where you were usually?

11 A In that same room, yes.

12 Q Who was in the room on that day?

13 A It was Mr. Robles and the sergeant. It had to be Vargas
14 -- Vargas always walking around. Always, always right there.

15 Q So Mr. Robles and the sergeant were there that day.

16 A Yeah, but that day I had the conversation with Mr. Robles,
17 Mr. Robles and the sergeant was standing up.

18 Q What did you talk about?

19 A We talking about a few things, and then he tell me, "Hey,
20 you know what? The sergeant and I'm have the idea, you don't
21 want -- you, you friend to go to jail. We don't put him in
22 ail. We going to rob him. You know when he deliver the
23 drugs?"

24 First of all, we discuss about how much drugs, I think.
25 Every time -- I mean every time that guy -- like I say, no,

1 right? Every time that guy from the body shop buy, he buy
2 three kilos, four kilos. Every time.

3 So, he say if I know what day he come to delivery. And I
4 say I don't know right now, but I can ask. So they told me,
5 they said, he and the sergeant have the idea they rob --

6 **Q** When you say "they," Mr. Robles told you.

7 **A** Mr. Robles told me that. He say --

8 (Reporter interruption)

9 **THE WITNESS:** "Okay, you don't want your friend to go
10 jail. The sergeant and me have the idea there, rob him. The
11 money. Not the drugs, the money."

12 **BY MR. HEMANN:**

13 **Q** Okay.

14 **A** And, I say, "How you going to do that?"

15 And he's like, he come with a plan and say, "Okay, you
16 find out what day he come, we waiting for him, wait for the
17 deal is over then we follow him, stop it. And take, pull him
18 from the car and take the car. And then we take the car apart.
19 But your friend stay in the middle of the street."

20 I be like, "He's my friend." I be like --

21 **Q** So when you say you "be like," you responded to Mr.
22 Robles?

23 **A** Yes. I don't want to do that, but -- okay, but I want to
24 -- I don't want to do that. I really don't want do that. He's
25 my friend. You know?

1 Q And you said he's your friend?

2 A Yeah. In the past when he ask me, "Give me your friends,"
3 I say no. "Give me people who do drugs," no. Because these
4 are my peoples. My friends.

5 Q So when you said "These are my friends; I don't want to do
6 it," did the sergeant say anything?

7 A "We don't want to arrest him."

8 Q What did he say?

9 A "We don't want to arrest him. We don't want to arrest
10 your friend." "Him." I mean, he say "him" but it's me, like
11 my friend.

12 Q Okay.

13 A And, and we talking about, like, how much money are we
14 going to have, I say, "Well, he always have four kilos, that's
15 more than \$65,000." Three kilos is 48. Because in the United
16 States it is 16,000 at that time, a kilo, something like that.

17 The guy in the body shop, he never ordered less than three
18 kilos, two kilos. He always order more than two kilos.

19 Q So after you had that conversation in the -- in the office
20 at the police station, did you ever talk to Mr. Robles again
21 about that man?

22 A I think that night, that same day, I say, "Okay, I want to
23 find out when my friend come to see that guy in the body shop."
24 But I don't want to do that. But they tell me that they don't
25 want to arrest him, but anyways, I don't want to do that. I

1 don't want to hurt my people.

2 Okay, so, I was like -- I don't know the time, sir, but
3 was around -- all this thing happened around 10:00 and 2:00 in
4 the morning. I don't know if it was 10:30 or 11:00, but was in
5 that time. Because, I was at Fifth and Market, and they turned
6 the lights off, 10:00.

7 **Q** And that's the shelter?

8 **A** Yes.

9 **Q** Okay.

10 **A** They turned the light out at 9:45, and it's already no
11 lights when they call me. So I had to go to the bathroom, and
12 that's when they invite me to some bar. Mr. Robles invite me
13 to one bar in North Beach, close, one bar. I don't remember
14 the street, but it's close to North Beach. To Broadway.

15 **Q** Did you go?

16 **A** Yes. They give me a taxi, they say, they call taxi for
17 me, wait for him at 5 and Harrison -- I mean 5 and Brannan.

18 **Q** Okay.

19 **A** The taxi pick me up. When I come to the place, Vargas pay
20 for.

21 **Q** Okay.

22 **A** Vargas pay for the taxi so I come inside the bar.

23 **Q** Who is in the bar?

24 **A** Vargas, Robles and another cops. I don't know these guys.
25 But I know it is a cop because someone has a pistol or stars, I

1 know, they have the little thing that they put here
2 (Indicating).

3 Q Uh-huh.

4 A It was a lot of cops. Probably six, seven. I never seen
5 that guys.

6 Q So was it unusual for Mr. Robles to call you this late in
7 the evening?

8 A Yeah, he never call me at that time. Most of the time
9 they work in daytime. They work in, I think, 8:00 to 4:00.

10 Q Did you have a conversation with Mr. Robles in the bar?

11 A We started talking about -- nothing, just talking, you
12 know. They introduced me to the other guys. At one point he
13 only tell -- oh, he buy me a beer, he give me a beer in a
14 drinking cup. He was sit right there, I was sit next
15 (Indicating), Vargas, another police officer (Indicating). No,
16 Vargas was in here and he sit over there (Indicating).

17 And one thing, say, "Hey, dude, what's up? We going to
18 rob your friend? What the fuck?"

19 I be like -- I'm looking at the officer, the officer
20 looking at me. And I don't feel good at that moment, because
21 everybody looking at me. And I said like this, man. "That's
22 all." So I say, "I don't know, bro, we talk later." I say, "I
23 want to leave."

24 Q You said, "I want to leave"?

25 A "I want to leave," yeah.

1 Q Why did you want to leave?

2 A Well, I don't like talking in front of the police
3 officers. And we do bad things. And he talking in front of
4 all the police officers that I never see in my life. And, I
5 don't know if he was drunk, or I don't know.

6 But, the next thing I say, "You know what? I want to
7 leave."

8 And he say, "Okay," and he put his hands on me, and he
9 escorted me outside. When we come outside, caught taxi -- I
10 don't know if he paid the taxi or gave me \$20 to pay the taxi.

11 Soon I leave, I text him, or I call him. I don't remember
12 what happened, but I remember he text me back. I tell him,
13 "You know what, man, we don't want to do this deal because you
14 tell me in front of all that cops."

15 And he call me -- and he text me back, "They don't know
16 what's up, dude. What's wrong with you? They don't know
17 what's up."

18 And then he call me again. You know what, marijuana and
19 all that shit.

20 And I'm like, "I don't want to do it, I don't want to do
21 it, I don't want to do it."

22 Q And that was at the end of it? Did you ever follow up and
23 do that deal?

24 A Yes. Then they ask me a couple of times, but I say, "Man,
25 you talk too much. No." That was the excuse. The excuse, and

1 we never --

2 **Q** That was the excuse you used?

3 **A** Yes, that was the excuse I used, I don't want to do that.

4 **Q** After that, did Mr. Robles leave and go to motorcycles?

5 **A** Yes.

6 **Q** And you mentioned earlier that you continued doing some --
7 some jobs with Mr. Vargas. Correct?

8 **A** Correct.

9 **Q** Okay.

10 **MR. HEMANN:** Ms. Lane, could you put up Exhibit 276?

11 **BY MR. HEMANN:**

12 **Q** And you said there were somewhere between ten and 15.

13 (Document displayed)

14 **A** Huh?

15 **Q** There was somewhere between ten and 15 that you did with
16 Officer Vargas?

17 **A** Yes.

18 (Witness examines document)

19 **Q** Okay. And did you get cash out of all of those ten to 15
20 that you did with Mr. Vargas?

21 **A** Right, in the house (Indicating)?

22 **Q** Not this one.

23 **MR. HEMANN:** Take it off for one second, please.

24 (Document taken off display)

25

1 **BY MR. HEMANN:**

2 **Q** Forget you saw that picture for a moment.

3 You said earlier, ten to 15 that you did with Mr. Vargas,
4 right?

5 **A** Yes.

6 **Q** Did you get cash out of all those deals?

7 **A** I have cash, and I have a couple of things.

8 **Q** Some property?

9 **A** Property. Mr. Robles gave property too.

10 **Q** Mr. Robles gave you property too?

11 **A** Yes, and the computer from the police station in the
12 beginning. A computer, a laptop (Indicating).

13 **MR. HEMANN:** Would you put it up again?

14 (Document displayed)

15 **BY MR. HEMANN:**

16 **Q** Did one of the deals you did with Mr. Vargas involve this
17 apartment building?

18 **A** Yes, sir.

19 **Q** On Leavenworth Street?

20 **A** Yes, sir.

21 **Q** And, just a very big overview, who lived there?

22 **A** One guy, the name was Iveen (Phonetic), or Dean, something
23 like that. And my little friend, José. And another guy that I
24 don't know his name.

25 **Q** And did you tell Mister -- were they dealing drugs out of

1 that apartment?

2 **A** Yes.

3 **Q** And did you tell Mr. Vargas about it?

4 **A** Yeah, one day before, I go to his house to buy. And that
5 dope dealer, he have a brand-new computer. And I tell Vargas I
6 want that computer.

7 **Q** And, did you tell him they were dealing drugs there?

8 **A** Yes.

9 **Q** And, after you told Mr. Vargas that, did Mr. Vargas hit
10 that building?

11 **A** Yes. And I tell Mr. Vargas, don't arrest the little one,
12 the José, because he don't have nothing to do with that. Um,
13 he only is a roommate for the dope dealer.

14 And yeah, Mr. Vargas, hit that house.

15 **Q** And, did Mr. Vargas get that computer for you?

16 **A** Yes. A computer and a BB gun.

17 **Q** And he gave both of them to you afterwards?

18 **A** Yes, he gave them to me.

19 **Q** Now, you mentioned talking to Mr. Vargas about arresting
20 the people in the apartment. Right?

21 **A** Yeah. I tell the little guy with the name José, doesn't
22 have nothing to do with the drugs. He have two jobs. He
23 working. He only is a roommate in another room. And he arrest
24 him anyways.

25 And Vargas told me, "If they living with a dope dealer and

1 he know, he go to jail too." So, I'm a diablo.

2 **Q** So, did Mr. Vargas have a different approach to arresting
3 people than Mr. Robles did?

4 **A** Yes. The first time that I talked to Vargas, one of the
5 first thing, because Mr. Robles in the beginning told me, "Make
6 sure they have money."

7 Because I tell they have drugs. Have money, make sure
8 they have money. When he walk from the room, Vargas told me --
9 I think it's first time that I talked to Vargas, he say, "You
10 know what, dude, these guy want to commit (Unintelligible) one
11 day because all he want is money, money. He don't care about
12 case." That what Mr. Vargas told me. I think that was the
13 first conversation that we have.

14 **Q** Did Mr. Vargas, though -- if that was Mr. Robles's
15 approach, what was Mr. Vargas's approach to arresting people?

16 **A** Yes.

17 **Q** What did Mr. Vargas do about arresting people? Did he
18 arrest more people or less people?

19 **A** More people. But, I do more time -- more things with
20 Vargas, too, because Mr. Robles leave. So, I don't work for
21 him no more.

22 **MR. HEMANN:** No further questions, Your Honor.

23 **THE COURT:** Okay. Cross.

24 Ladies and gentlemen, do you want to stand up to stretch
25 for a minute? And then we will start with cross-examination.

1 Thank you. You may proceed, Mr. Getz.

2 MR. GETZ: Thank you.

3 CROSS EXAMINATION

4 BY MR. GETZ:

5 Q Good afternoon.

6 A Good afternoon, sir.

7 Q Do you remember on January 10th, 2012, you testified in
8 this building? You took an oath (Indicating), and you
9 testified in grand jury.

10 Do you remember that?

11 A I don't remember it was that day, but I remember I go to
12 grand jury.

13 Q Okay. So, I -- I say to you that the date that you came
14 here and testified was January 10th, 2012. Does that sound
15 right?

16 Do you -- do you accept that?

17 A Yeah, probably, yes.

18 Q Okay. Now, if you testified on January 10th, 2012, that
19 is almost three years ago. Correct?

20 A Correct, sir. Yes.

21 Q When you testified before grand jury three years ago, were
22 the things you testified about better in your mind than today?

23 A Part of that, yes.

24 Q More clear?

25 A Yeah, more -- more -- yes.

1 Q All right.

2 A I don't know the dates but I know what we do.

3 Q That's fine. When -- when you testified in the grand jury
4 you took an oath to tell the truth very much like the one you
5 took here. Correct?

6 A Correct, señor. Sir.

7 Q And you knew, you knew when you came here that day, three
8 years ago, almost three years ago, you knew the subject matter
9 you were going to talk about. Correct?

10 You knew what you were going to talk about.

11 A I know I have to say that I -- I come to say the true, the
12 things that happened in the past.

13 Q Because, back then, you already had been interviewed many
14 times. Correct?

15 A Correct. With the FBI? Yes.

16 Q Yes.

17 A Yes, sir.

18 Q Okay. Now, when you testified three years ago, you had
19 your lawyer with you that day, Mr. Guzman. Correct?

20 A Correct.

21 Q Also, the whole time you have been testifying here, your
22 lawyer, Mr. Guzman, has been seated where you can see him.
23 Correct?

24 A Yeah, I can -- yes, right there.

25 Q All right. Now, my question for you is do you feel -- and

1 it's fine if you do, but do you feel like you need to have a
2 lawyer here when you testify?

3 **A** No, I don't feel that.

4 **Q** Okay.

5 **A** Because I'm speak the truth. I never lie to the guys, I
6 never lied to these guys, I just speak the truth.

7 **Q** When you testified in 2012, they asked you what the name
8 of the sergeant was. Correct?

9 **A** Hmm, I don't remember, sir.

10 **Q** Okay.

11 **A** Exactly, they asked me what the name is.

12 **THE COURT:** If you are going to be asking a series of
13 questions from that transcript, which I assume you are, I would
14 like a copy of it or -- is it an exhibit? Or is it --

15 **MR. GETZ:** I do have the transcript. But --

16 **THE COURT:** Well, is it an exhibit in the case? Or
17 does the government have a copy of it?

18 **MR. HEMANN:** I have my copy, and I'm happy to give it
19 to Your Honor.

20 **THE COURT:** No, you need a copy.

21 **MR. GETZ:** Maybe I could do it a different way.

22 **THE COURT:** Well, sure. All right. Okay. I just
23 need to look at --

24 **MR. GETZ:** No.

25 **THE COURT:** The -- the questions and so forth. But

1 if you do it a different way, that's fine. Maybe I don't need
2 to look at it.

3 **MR. GETZ:** All right.

4 **THE COURT:** Okay.

5 **BY MR. GETZ:**

6 **Q** When you were in grand jury, they showed you a picture of
7 the sergeant, and they asked you what is his name. Do you
8 remember that?

9 **A** I don't remember, sir, but yeah, they showed me picture
10 about the sergeant.

11 **Q** All right.

12 **A** They did.

13 **Q** You said you did not know his name, but you think of him
14 as the sergeant. Do you remember saying that?

15 **A** Yeah, I remember that, sir. Probably, at that time, I
16 know that his name but it's hard for me to remember that name,
17 for me. I already forget in the 25 minutes ago.

18 **Q** All right. You forgot earlier --

19 **A** Probably in that day I know the name.

20 **Q** You forgot earlier today. Correct?

21 **A** Yeah.

22 **Q** Okay. Now, you never had called him on the phone, had
23 you? You never had his phone number, the sergeant?

24 **A** Oh, no, sir.

25 **Q** He never called you?

1 **A** He never called me. I speak to him only one or two times.

2 **Q** You never saw him on the street in the Mission, did you?

3 **A** I seen him in the Mission street.

4 **Q** Really? Did you talk to him?

5 **A** I seen him one day at the 12th and Market -- I mean,
6 Market and Van Ness. There at the end. He walking with
7 something in the arm, I see him, Market and Van Ness.

8 And I say, "What's up, how you doing?" That's it. And
9 then he walk away and I walk away.

10 **Q** And you remembered him that day because you had seen him
11 at Mission Station?

12 **A** Yes, I know him because I see him. And I know he's the
13 sergeant of Mr. Vargas and Mister -- yes.

14 **Q** How many times do you think you have been to Mission
15 Station?

16 **A** How many times I go to Mission Station?

17 **Q** (Nods head)

18 **A** With Vargas and Robles, both? A lot of times, 40 to 50
19 times. A lot of times.

20 **Q** So, 40 to 50 times you --

21 **A** Yeah, around like that, yes.

22 **Q** Forty to 50 times you have been to Mission Station.

23 **A** Yes.

24 **Q** All right.

25 **A** Thirty, 40 times.

1 Q And of the 40 to 50 times, how many times do you think you
2 saw the sergeant there?

3 A Most of the time, I see he's walking around. You talk
4 about that time that he was in there when I discuss things?
5 Like five times. But most of the time he's walking around.
6 Walking around.

7 But the time that he was standing up, watching me and
8 focus on our conversation, five times, okay, like, four times.
9 I don't remember exactly, but not too many.

10 Q Forty to 50 times you have seen him at the station.

11 A I go to the police station, like, 40 times. And that
12 times I see him probably around 20 times, 25 times, around.
13 But like five times in the room, with me around -- and Robles
14 and Vargas, inside. Five.

15 Q Five times in the room, close enough to hear you.

16 A Yes.

17 Q You'd say.

18 A Around -- not too many times, sir.

19 Q Okay. And you've testified today about two times when you
20 were saying things you thought he could hear?

21 A Yeah, that he talked to me. Yeah.

22 Q Okay. So, am I correct, am I correct --

23 A Yes.

24 Q -- in asking you that the 40 times that you were at
25 Mission Station, 38 times, he was not close enough to hear you,

1 you say?

2 **MR. HEMANN:** Objection, Your Honor.

3 **THE WITNESS:** He was back and forth, sir. Back and
4 forth. I'm sorry.

5 **MR. HEMANN:** It's the characterization of the number.

6 **THE COURT:** (Inaudible)

7 **THE WITNESS:** I say 40; probably it was 36, or 38. I
8 don't remember. But the times that I remember that he was
9 there, I remember because, no was many times. That's four
10 times.

11 (Reporter interruption)

12 **THE WITNESS:** Because the time that he was in the
13 room. The time I go to the police station, I don't remember.
14 The time that he was around, I don't remember. I don't pay
15 attention to the details.

16 **BY MR. GETZ:**

17 **Q** You did not pay attention to him, did you?

18 **A** No. I don't pay attention to him because I dealing with
19 Mr. Robles. And Mr. Vargas, later.

20 **Q** I just want to make sure I heard something correctly you
21 said a moment ago.

22 **A** Yeah.

23 **Q** Did you raise the number to 46, 48, now?

24 **A** That's the -- probably was more, sir. I don't know -- I
25 don't say, "Oh, today I go see these guys, two, three," I don't

1 put a note in my book. Nothing. Probably was 70 times. I
2 don't remember. Was a lot of times.

3 Sometimes I go to the police station two times in one day.
4 Sometimes I don't go one day; sometimes I go three days.
5 Really don't remember how many times. I'm sorry if I put 40
6 times; I'm sorry. Probably was more than that.

7 I don't remember -- I don't remember how many times,
8 because I go a lot.

9 Q I just want to make sure --

10 A Yeah.

11 Q Did I hear you say a moment ago, "70 times" in Spanish
12 "setenta"? Is that what you just said?

13 A *Setenta?*

14 Q How many -- what was the number you said?

15 A No, I put example. I don't say I go ten, 70.

16 Q You don't say "*setenta*."

17 A Maybe I say -- okay, let me explain to you.

18 Q Well, before do you, let me --

19 A You tell me --

20 **THE COURT:** I think now you're arguing with the
21 witness. I think that his testimony stands as it is.

22 I mean, you could cross-examine him on it, but I don't
23 know; how much more time are we going spend on whether it's 68
24 or 70 or 40?

25 **MR. GETZ:** Well, it's getting better.

1 **THE COURT:** He says he doesn't know the number.

2 **MR. GETZ:** All right.

3 **THE COURT:** I think that's established. He doesn't
4 know the number. He said he was there many times.

5 **THE WITNESS:** Many times. I don't know exactly, sir.
6 I don't know how many times.

7 **MR. GETZ:** Okay.

8 **THE COURT:** Okay.

9 **BY MR. GETZ:**

10 **Q** Okay. I want to take a moment and ask you about Sergio.
11 You know the Sergio I'm talking about. The one --

12 **A** The one that we talking before, sir?

13 **Q** Yeah.

14 **A** Yes, sir.

15 **Q** So, Sergio, have you talked to him?

16 **A** Not too much.

17 **Q** A little bit?

18 **A** "How you doing, what's up?"

19 **Q** Did you ever buy anything from him?

20 **A** When I was with the FBI, they send me to buy one thing.

21 **Q** What was that?

22 **A** We buy iPhone I think -- I mean, iPod. The thing that you
23 heard music (Indicating). I believe so. He sold me something
24 like --

25 **Q** Did you know what else he sold besides that?

1 **A** He buy anything, stolen. I don't know. Hmm, I don't know
2 how he do his business. All I know is he buy stolen things.
3 Because I have friends, the street, they selling to him.

4 No friends -- guys that I know in the Mission, they
5 stole -- like, they stole that computer (Indicating), they run
6 to Sergio.

7 You go pawnshop, they ask for ID. Sergio don't ask you.
8 He don't give you a receipt. You don't have receipt. He just
9 (Indicating). Clean buy. Don't pay taxes, don't pay nothing.
10 Just buy.

11 **Q** Okay.

12 **A** So --

13 **MR. GETZ:** I have nothing further.

14 **THE COURT:** Okay. Thank you.

15 Ms. Caffese?

16 **MS. CAFFESE:** Thank you, Your Honor.

17 **CROSS EXAMINATION**

18 **BY MS. CAFFESE:**

19 **Q** Good afternoon.

20 **A** Good afternoon. Good afternoon, ma'am.

21 **Q** Good afternoon, Mr. Hernandez. Thank you.

22 Sir, I want to go over a little bit of the background that
23 you talked about early on in your direct examination. And that
24 is that you came here to the United States in the nineties.

25 Is that right?

1 **A** Yeah, around -- around that year, yes.

2 **Q** And you indicated that you came here, and at the time, you
3 were undocumented. Is that correct?

4 **A** Excuse me?

5 **Q** You were undocumented.

6 **A** Uh --

7 **Q** You were in --

8 **A** Yes, yes. Yes.

9 **Q** You were illegal.

10 **A** Yes.

11 **Q** And between your entry into the United States in the
12 nineties up until 2008, you, quote, sold and conspired to sell
13 kilos of heroin, and large quantities of cocaine.

14 Is that correct?

15 **A** No. Only heroin. Before '98.

16 **Q** I'm sorry? I'm sorry. Go ahead?

17 **A** You said before '98?

18 **Q** No, I said from the 1990s until 2008, you conspired and
19 sold -- sold and conspired to sell kilos of heroin, and large
20 quantities of cocaine. Correct?

21 **A** Yes, ma'am.

22 **Q** All right. And that's true, and in fact, that was part of
23 the agreement that you have made with the government in this
24 case. Is that right? To admit that to be a true fact.

25 Correct?

1 **A** Like, I have immunity for -- like -- I don't remember we
2 talking about that. We talking about whatever I do with the --
3 I have immunity what I do in the past, about -- drugs and other
4 kind of things, yes.

5 **Q** And in 2008, as you have told the jury, you were actually
6 a guard to a methamphetamine facility. Is that right?

7 **A** I really don't guard that. My friend let me stay in that
8 house. He say, "I have a trailer, you can stay in that
9 trailer. But, I have that thing. Do you want to live over
10 there?"

11 I say, "Okay." My babies on the way, I'm working, I don't
12 have no money. And yeah, I move. Big trailer. The trailer,
13 he has his room, I have my own room.

14 **Q** You were a guard for that facility, is that right? True
15 statement?

16 **THE COURT:** Wait, wait. I think we'll move along
17 faster --

18 **THE WITNESS:** I don't get paid for.

19 **THE COURT:** I think you should try to keep words
20 fairly simple, direct, in your questioning, if you can.
21 Because I think that sometimes it gets a little lost in the
22 translation.

23 "Guarded a facility" instead of that you were -- whatever
24 you can say about it, but --

25 **MS. CAFFESE:** All right. Thank you.

1 **THE COURT:** You can describe it. I'm just saying you
2 should try to keep it simple.

3 **MS. CAFFESE:** Okay. Well -- all right. I'll try.

4 **BY MS. CAFFESE:**

5 **Q** Well, this place that you watched over -- watched over?

6 **A** I don't pay for. He told me, "You can" -- yes.

7 **Q** I understand that.

8 **A** Okay.

9 **Q** You didn't have to pay, because part of your job was to
10 watch over this place that essentially made meth. Right?

11 **A** That's not part -- that's not part of this job. He's my
12 friend and he tell me, "You don't have no money, I have this
13 trailer. You can move over there, but there's stuff in the
14 back."

15 (Reporter interruption)

16 **THE WITNESS:** "You can move over there but there's
17 drugs inside. There's crystal meth inside."

18 I don't have no job, I don't have no choice. I have my
19 wife, my wife's pregnant. Well, it's my girlfriend. And we
20 move over there into that trailer.

21 He say, "There's a drug inside the trailer." I don't have
22 to watch that. I working. He don't tell me, "I pay you to do
23 that." He only say, "You can move over there."

24 **Q** Let me ask you, sir: When you say you had a baby on the
25 way, is that the child you have here in San Francisco?

1 **A** No, it's my twins. I have twins.

2 **Q** All right. So, you had twins?

3 **A** Yes, ma'am.

4 **Q** Different from the child, the daughter you have here in
5 San Francisco.

6 **A** Yes, ma'am.

7 **Q** Is that right? Okay. And, during the course of -- or
8 since the time that you have become or have -- a cooperator or
9 began cooperating with the government in this case, you've
10 received approximately \$43,000 to date. Is that right?

11 **A** Do you want -- from then to right now, probably yes.

12 **Q** All right. And you will still get compensated until this
13 case is over. Correct?

14 **A** I don't know.

15 **Q** You don't know? All right. So, \$43,000 is a lot of money
16 to you, isn't that right?

17 **A** It's a lot of money, ma'am.

18 **Q** Now, you had a child -- or didn't you have a child here --
19 or did you have a child here in San Francisco when you moved to
20 --

21 **A** I have my daughter here.

22 **Q** All right. Have you shared any of that money with your
23 wife and daughter here in San Francisco, sir?

24 **A** They don't give me large amount of money. Just give me
25 like four, basically five days. When they pay me the money, I

1 have to go to pay the room, the hotel. I pay the room, the
2 hotel, and then I buy my food and the money's gone.

3 **Q** So the answer to my question then is no, you have not
4 shared any of that money with your wife and child here in
5 San Francisco.

6 **A** No, no.

7 **Q** Is that correct?

8 **A** No, ma'am.

9 **Q** And you received immunity on January 9, 2012. Is that
10 right?

11 **A** Yes, ma'am.

12 **Q** Okay. And the immunity was that the government was not
13 going to prosecute you for all the times that you have dealt
14 with kilos of cocaine and heroin and whatever other drugs you
15 have dealt with. True statement?

16 **A** I don't remember we talking about that. We remember, they
17 going to give me immunity if I cooperate, and say the true, and
18 say only will the true, and just the true. Nothing --

19 **Q** And if I recall your direct examination correctly, you
20 said to tell the truth, and tell them everything. Is that
21 right?

22 **A** Only the true.

23 **Q** Yeah. But, tell them everything. Is that right?

24 **A** If it's -- if it's everything, this mean true, yes,
25 everything. Tell the true.

1 Q So whatever you tell them, whatever you tell them is
2 supposed to be the truth. Is that right?

3 A Yes. Or they told me, "The immunity go away and you get
4 persecuted (sic) like them."

5 Q And on January 12th, three days after you got immunity, is
6 the day that you testified before the grand jury. True
7 statement?

8 A I don't remember. It was three days before. But,
9 probably yes. I don't think it was one week. I'm not good
10 with the dates. I don't remember. It was three days later. I
11 don't remember.

12 Q We will get back to that. In any event, it was before you
13 testified before the grand jury and took the oath to tell the
14 truth that you received immunity. True statement?

15 A Yes, I think, yes, I think.

16 Q All right. And in addition to the 43,000 and some-odd
17 change that you have received, you were also given, excuse me,
18 parole status from the Department of Homeland Security. True
19 statement?

20 A For work, yes.

21 Q And you received employment authorization, which led to a
22 job in September of 2012 for your cooperation with the
23 government. True statement?

24 A Yes, ma'am. Yes, ma'am.

25 Q And when you came to this country, you came, and

1 essentially your job was to traffic in narcotics. Is that
2 right?

3 **A** Yes, ma'am.

4 **Q** All right. And let's go over all the drugs that you have
5 trafficked in. It would be heroin?

6 **A** Yes, ma'am.

7 **Q** Right? Cocaine, is that right?

8 **A** Yes, ma'am.

9 **Q** Crystal methamphetamine, is that right?

10 **A** Yes, ma'am.

11 **Q** Okay. And, as you said on your direct examination, you
12 worked primarily in the Mission, 16th-Mission area, that's
13 right?

14 **A** Yes, ma'am.

15 **Q** Small community there?

16 **A** I work all San Francisco. A lot, a lot -- no, no, I can't
17 say only Mission. People come from Oakland. And yes, I did
18 selling, I have -- I do dealings my whole life.

19 And I think it's right. Mr. Robles shows me -- I mean,
20 pick me up. I think this is -- if I was a priest, a priest, I
21 don't think he come to me. He come to me because I'm dealing
22 drugs.

23 **Q** And you've seen the things that these drugs do to people
24 in that area. Is that right?

25 **A** Is what?

1 **MR. HEMANN:** Objection, Your Honor. Relevance.

2 **THE COURT:** I'll allow it. I'll allow it.

3 **BY MS. CAFFESE:**

4 **Q** You have seen the things, you've seen what happens to
5 people who use drugs like heroin and cocaine and crystal
6 methamphetamine. Is that true?

7 **A** I never --

8 **Q** Is that true sir?

9 **A** Yes, I never -- I never deal with crystal meth because
10 they -- very bad.

11 **Q** All right. You, yourself, as I believe you indicated, are
12 a recovering addict. Is that right?

13 **A** Huh?

14 **Q** You are a recovering addict? Is that right?

15 **THE INTERPRETER:** (Inaudible)

16 **THE WITNESS:** Yeah, I tried to -- yeah, when I'm,
17 when I meet Vargas I'm start -- when I'm start working with
18 them, I'm start -- slow down all the things, don't do no more.
19 But, as I'm living, when I come back I try to stop it, when --
20 2007.

21 **BY MS. CAFFESE:**

22 **Q** At the time that you were working as an informant, you
23 were selling and using drugs. Is that correct?

24 **A** When I'm working for Mr. Robles or Mr. Vargas, probably I
25 did, probably. And I say ,no like before, probably, yes, I do.

1 Maybe not every day, not every week, no night before, but
2 probably in the beginning, yes.

3 Q So the answer to my question is yes, you were selling
4 drugs when you were working as an informant. Is that right?

5 A I -- selling drugs, yes. Because I looking for informant
6 -- for peoples to turn in.

7 Q All right.

8 A I have two jobs. I'm working.

9 Q And you testified that one of your big bosses was
10 Mr. Valencia, is that right?

11 A Yes, ma'am.

12 Q And apparently, you've worked for a lot of big drug
13 bosses. Is that right?

14 A He, I work for him.

15 Q You worked -- Mr. Valencia was not the only big drug boss
16 you worked for. Is that true?

17 A I worked with two more in the past. But Valencia was the
18 big one.

19 Q Mr. Valencia fired you, is that right?

20 A Yes. No, he -- yes. I fire myself, because I use a lot
21 of drugs.

22 Q Well, he -- he didn't let you work for him anymore. Is
23 that right?

24 A Because I'm -- I -- he don't come one day and say,
25 "Hernandez, get the fuck out of here," no. I fucked -- he give

1 me a lot of opportunities. He tell me, "I can pay for your
2 recover, stop it."

3 Yes, one time he say, "I can't deal with you no more."

4 Q And you stopped working for him, or he fired you, or
5 however the that relationship ended is because even the drug
6 bosses didn't trust you. Is that right?

7 A Um, that's correct, ma'am.

8 Q And you were kind of like a free agent or a freelance
9 writer, so to speak? You were allowed to go from one drug boss
10 to another drug boss to a third drug boss. True statement?

11 A I didn't go with nobody after that, because I had a
12 problem with the drug.

13 Q You said that you worked for three drug bosses?

14 A In the past.

15 Q Is that right?

16 A In the past. One, nineties to '94. Another one '95,
17 until I go to prison in '98. And then '99 with Valencia, yes.

18 Q Right. Three of them, in a relatively short period of
19 time. Is that right?

20 A Short time, 12 years? I don't think -- oh, yeah. Twelve
21 years? Okay. Short time, yeah, 12 years. Yeah.

22 Q Four years --

23 A Not 12 years, okay.

24 Q Four years, each boss?

25 A Everybody go to jail in that business, ma'am. And my boss

1 go to jail, so I have to look for another boss.

2 **Q** And they didn't mind, they didn't mind that you were just
3 like a freelance drug dealer, is that right?

4 **THE COURT:** The term "freelance," why don't you find
5 out if he knows what that means.

6 **THE WITNESS:** I don't know what that means.

7 **MS. CAFFESE:** Okay. I'll rephrase. Excuse me.

8 **THE COURT:** Great. Thank you very much.

9 **BY MS. CAFFESE:**

10 **Q** So, I think I've made my point, but the point is --

11 **THE COURT:** No, wait a minute. Wait, wait. I mean,
12 if you use words and he doesn't understand the words, I don't
13 know what point you made.

14 So, if you're interested in making the point, I think you
15 have to use essentially language that he understands.

16 **BY MS. CAFFESE:**

17 **Q** Who are the other two drug bosses that you worked for,
18 aside from Valencia?

19 **A** Another guys. I have to --

20 **Q** What are their names?

21 **A** I have to say that?

22 **Q** Well, you testified that you worked for other drug bosses.

23 **MR. HEMANN:** Objection.

24 **THE COURT:** Well, let's see. I'm trying to figure
25 that out.

1 **MS. CAFFESE:** That's fine, Judge. That's okay. It's
2 not that -- I can ask another question.

3 **THE COURT:** Okay, thank you.

4 **THE WITNESS:** Thank you.

5 **MS. CAFFESE:** You're welcome.

6 **BY MS. CAFFESE:**

7 **Q** And, these two other people didn't mind that you had
8 switched bosses. Is that right?

9 **A** Yes.

10 **Q** Okay. Is that typical in the drug industry, that you can
11 work for different bosses or different employers who presumably
12 are competing against each other?

13 **A** My first boss go to jail. He go to jail. And, I was in
14 Mexico when he go to jail. So, find me a new, new boss. I
15 come work for him.

16 And then I go to prison. My boss go to prison too. So
17 when I get out, he's still in prison. So, somebody recommend
18 me a new guy.

19 And, one of the thing is I do these things from when I was
20 a kid (Indicating). That's the only thing I know. When I go
21 to Atlanta, and I'm finding a new way to put food on my table,
22 working, I work --

23 **Q** Is it customary for somebody like you to work for
24 different bosses who are competing against each other?

25 **MR. HEMANN:** Objection. Relevance.

1 **THE COURT:** Well, first of all, competing against
2 each other, I don't know what that -- where the evidence is of
3 that. At any rate, I'm going to sustain the objection. I
4 think it is somewhat remote.

5 **BY MS. CAFFESE:**

6 **Q** Were these bosses working for different organizations?

7 **A** No, everybody come from my country. It's the same, same
8 -- same, same my friend, everybody. We don't compete. The sun
9 is too big for everybody.

10 **Q** So nobody, where you came from, none of the drug cartels
11 are competing against each other? Is that what you are telling
12 us?

13 **A** Yes. Not at that time. Now, yes.

14 **Q** Okay. So during this time period in the nineties, there
15 was no competition?

16 **A** You have money, you buy. It didn't --

17 **Q** But when you became an informant, my recollection on
18 direct examination was that you wanted to get Guerrero out
19 because he was your competition. True statement?

20 **A** It's not really my -- he is not my friend, first of all.
21 He knows my boss. He is a guy that -- I buy things for him in
22 the middle, and he find another connection. But he's not
23 really my competition; he's not my boss.

24 **Q** Sir, on direct examination --

25 **A** And he is not from my country.

1 Q On direct examination, did you testify that Guerrero was
2 your competition? True statement?

3 A Okay.

4 Q Okay. Thank you. So, you lived in the Mission for about
5 20 years. Is that right?

6 A That's correct, ma'am.

7 Q And you knew everybody in the Mission, is that right?

8 A I -- walking around all the Mission, all the -- not
9 everybody. Most of the peoples.

10 Q Most of the people. So, 16th and Mission, you would know
11 people who hung out there. Is that right?

12 A Really, really, 16th and Mission, no. In the Mission
13 District, 16th and Mission, some junkie peoples, I don't have
14 nothing to do with the guys. People that use a strong --
15 people that look like zombies, I don't have nothing to do with
16 them guys.

17 Q I don't think I -- well -- let's just say this.

18 All right. Did you know, for example, Daisy Bram in the
19 Mission?

20 A I don't know who's Daisy Bram.

21 Q Okay. Did you know -- well, you know Sergio Sanchez?

22 A Sergio, he was forever in 20 and Mission. I know that
23 guy.

24 Q Did you know Kelsey Stewart?

25 A No. I don't know who's Kelsey Stewart.

1 Q All right. So you didn't apparently know everybody in the
2 Mission then.

3 A I know people that deal in drugs.

4 Q So you knew a lot of big dope dealers. Is that right?

5 A Most, all my peoples come from Redwood City or Palo Alto.

6 Q So, is the answer to my question yes, you did know a lot
7 of dope dealers?

8 A I know a lot of dope dealers, yes, ma'am. Yes, ma'am.

9 Q And you started working actually as an informant as far
10 back as 1998. Is that right?

11 A I'm start working like what?

12 Q You started working as an informant, actually, back in
13 1998. Isn't that true, sir?

14 A I'm not working like an informant. They -- um, it's a
15 little complicated. I tell them where the drugs are. They
16 don't find it, when they arrest me.

17 Q All right.

18 A But they already got me, and I go to prison for.

19 Q All right.

20 A I don't make no deal.

21 Q It is a direct question, sir.

22 Well, let me ask you this. Before you testified today,
23 actually, you were interviewed. And I'm not going to go
24 through all of the interviews and communications you had with
25 these folks (Indicating).

1 **A** Yes.

2 **Q** But it started back on August 4, 2011. Is that right?

3 **A** Yes.

4 **Q** Okay. And, August 12th, 2011, you had interviews with
5 S.F. Police Department and FBI agents, is that right?

6 **A** Yes.

7 **Q** And incidentally it was on August 12, 2011 when you stated
8 that you were an informant dating back to 1998. True
9 statement?

10 **A** Yes.

11 **Q** All right. So you had actually been an informant before
12 you signed up as an informant with Officer Robles.

13 **A** I don't say -- I don't think I say "informant." I don't
14 think I say "informant." It is a different history. A couple
15 of police arrest me. And to this moment, I don't know what
16 happened. What I feel, I feel they train me first in that
17 moment because the lady called and say "Where you are," and I
18 say "I'm at 18 and Mission," and said "Wait for me, I'll go
19 over there and that (Unintelligible) narcotics."

20 So, I'm mad. I want to pay back, after they train me.
21 So, they know everything. They know who's in the housing,
22 who's over there, but they don't find the drugs. The drugs is
23 in someplace.

24 We don't want to, like, okay, going informant to you, let
25 me go; we don't make no arrangements. I just confess, confess,

1 I give you confession. Okay, the drug's somewhere. That's it.
2 They don't pay me, they don't let me go. I go to prison. They
3 don't pay me for. I don't -- I confess. I say yes, we have a
4 drug in the house. In that place.

5 **Q** Okay. Are you done, sir?

6 **A** Yes, ma'am.

7 **Q** So, why did you tell the authorities that you were an
8 informant back in 1998, if that wasn't true?

9 **MR. HEMANN:** Objection, Your Honor. He just
10 testified that he did not use the word "informant" with the FBI
11 in --

12 **THE WITNESS:** Never.

13 **BY MS. CAFFESE:**

14 **Q** Okay, so they misrepresented -- that would be --

15 **THE COURT:** Now, wait a minute. Wait a minute.
16 You're cross-examining him on a statement, I think, written by
17 somebody other than himself. Yeah.

18 And you can't actually do that, in terms of -- unless he's
19 adopted it as his statement.

20 I don't know, is it -- is it in quotes? I don't have it
21 in front of me. It may be the witness's or whoever is writing
22 the report, it may be that's that person's impression of what
23 he's doing.

24 Anyway, I sort of think now may be good a good time to
25 take a break today, because we're going to resume at 9:00

1 tomorrow.

2 I said I would give you the schedule. I think I -- maybe
3 I have already, but if I haven't -- I haven't.

4 Okay, we're all day tomorrow. That's Friday. Monday, all
5 day. Tuesday, all day. Wednesday, no. Thursday, no. Friday,
6 no. Because I'll be in -- out of state.

7 So, that's the schedule next week. In other words, two
8 days next week, Monday and Tuesday of next week.

9 So, thank you very much. Remember the admonition given to
10 you: Don't discuss the case, allow anyone to discuss it with
11 you, form or express any opinion.

12 I'll see you tomorrow at 9:00. You may leave your books
13 on the -- your jury books, take back to the jury room. Your
14 binders, just leave on your chairs, if you would.

15 (Jury excused)

16 (The following proceedings were held outside of the
17 presence of the Jury)

18 **THE COURT:** Okay. Let the Record reflect the jurors
19 have left.

20 So, Ms. Caffese, I don't want to confront you in front of
21 the jury. And it may be that we just simply have a mis- -- you
22 can step down.

23 A misunderstanding on cross-examination from a 302. It is
24 a 302, isn't it?

25 **MR. HEMANN:** It's a source report, but --

1 **THE COURT:** Source report. And, the rule I have in
2 the court so you can -- you can follow it, is that it's
3 perfectly proper to say to a witness something like: "Isn't it
4 a fact that you told the police officers that you were an
5 informant?"

6 He can say yes or no, whatever his answer is.

7 But your followup question can't be -- if he says no, as
8 an example, can't be "Well, is the person who wrote this
9 report, is he mistaken when he used the word 'informant'?"

10 **MS. CAFFESE:** Understood, Judge. I apologize.

11 **THE COURT:** You are a seasoned trial lawyer, and I'm
12 not concerned at all.

13 **MS. CAFFESE:** I apologize.

14 **THE COURT:** You don't have to apologize. I just
15 don't -- I feel that -- that the lawyers are much better off if
16 I stay out of it. They'll be unanimous in that feeling.

17 And so, I just have that rule, and that's just a better
18 way to proceed.

19 **MS. CAFFESE:** Understood.

20 **THE COURT:** Obviously if you think he used the word
21 "informant," you can call the officer to the stand, in your
22 case, or at some point, and -- and query him on that issue.

23 Okay. So --

24 **MS. CAFFESE:** Understood.

25 **THE COURT:** Let me just ask you, I'm only trying to

1 do some scheduling. And, you are certainly -- your -- your
2 cross-examination, you know, ought to be as long as you want it
3 to be.

4 But, do you have an idea how long you are going to be
5 tomorrow?

6 **MS. CAFFESE:** I would say one hour.

7 **THE COURT:** Oh, okay.

8 **MS. CAFFESE:** But I will say -- out of an abundance
9 of --

10 **THE COURT:** By the way, you're not limited.

11 **MS. CAFFESE:** So, I was going to say one hour and 15
12 minutes.

13 **THE COURT:** Anyway, what I want to do is make sure
14 the government then has additional witnesses that they are
15 going to bring in tomorrow.

16 **MR. HEMANN:** (Nods head)

17 **MR. VILLAZOR:** (Nods head)

18 **THE COURT:** Because I don't want them to have to rest
19 their case.

20 **MR. HEMANN:** We have a whole --

21 **THE COURT:** I mean, they can rest their case whenever
22 they feel comfortable.

23 **MR. VILLAZOR:** Sent them home today, Your Honor.

24 **MR. HEMANN:** We have a passel -- I don't know if
25 that's a lot, I think that's a lot -- a passel of witnesses.

1 We have witnesses to take us all the way through.

2 **THE COURT:** Okay. That is great. So, thank you very
3 much, everybody. Have a pleasant evening.

4 **MR. HEMANN:** Thank you, Your Honor.

5 (Conclusion of Proceedings)

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I, BELLE BALL, and I, KATHERINE SULLIVAN, Official
Reporters for the United States Court, Northern District of
California, hereby certify that the foregoing is a correct
transcript from the record of proceedings in the above-entitled
matter.

/s/ Belle Ball 

Friday, November 14, 2014

Belle Ball, CSR 8785, CRR, RDR


/s/ Katherine Sullivan

Friday, November 14, 2014

Katherine Sullivan, CSR 5812, CRR, RMR